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Thirty Years of Studies on Prosopography of Portuguese Early Modern Jurists

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António Manuel Hespanha †	22	Thirty Years of Studies on Prosopography of Portuguese Early Modern Jurists
Jean-Louis Halpérin	51	A German Linkage Between Criminal Law and Law of Nations as Academic Disciplines

Fokus focus

Tridentine Marriage

Benedetta Albani	66	Global Perspectives on Tridentine Marriage. An Introduction
David L. d'Avray, Werner Menski	71	Authenticating Marriage: The Decree <i>Tametsi</i> in a Comparative Global Perspective
Ana de Zaballa Beascochea	90	Indian Marriage Before and After the Council of Trent: From pre-Hispanic Marriage to Christian Marriage in New Spain
Pilar Latasa	105	Tridentine Marriage Ritual in Sixteenth- to Eighteenth-century Peru: From Global Procedures to American Idiosyncrasies
Robert C. Schwaller	123	The Spiritual Conquest of Marriage: How the Holy Office and Council of Trent Attempted to Reform the Laity of New Spain
María Elena Imolesi	131	Doing the Same But With Different Arguments: Matrimonial Dispensations in the Indigenous and Spanish Population of Colonial Charcas
Hélène Vu Thanh	143	Introducing Tridentine Marriage: The Jesuits' Strategy in Japan (Sixteenth and Seventeenth Centuries)
Marya Svetlana T. Camacho	153	Marriage in the Philippines After the Council of Trent (Seventeenth to Eighteenth Centuries)
Cecilia Cristellon	163	The Roman Congregations and the Application of the <i>Tametsi</i> as an Instrument of Their Policies Towards Mixed Marriages in Europe (1563–1798)

Thomas Duve, Fupeng Li	174	Translating Weimar. Introductory Remarks
Leticia Vita	176	Weimar in Argentina: a Transnational Analysis of the 1949 Constitutional Reform
Carlos M. Herrera	184	Weimar, the South American Way
Xin Nie	195	The Chinese Constitutional Social Welfare Articles Before 1949 – Comparison With the Weimar Constitution
Fupeng Li	207	Becoming Policy. Cultural Translation of the Weimar Constitution in China (1919–1949)
Donal K. Coffey	222	The Influence of the Weimar Constitution on the Common Law World

Stefan Vogenauer	232	Introduction: Two <i>Oxford Handbooks</i> on the History of Law
Caspar Ehlers	237	Multiple Universen der Rechtsgeschichte
Zeynep Yazici Caglar	241	Comparative Legal History – But How?
Anselm Küsters, Laura Volkind, Andreas Wagner	244	Digital Humanities and the State of Legal History. A Text Mining Perspective
Luisa Stella de Oliveira Coutinho Silva	260	Sexy Legal History: Mapping Sexualities in a Handbook
Victoria Barnes, Sean Bottomley, Anselm Küsters	265	Economic History as Legal History
Mariana Dias Paes	271	What About African Legal History?
Christoph H.F. Meyer	276	Zweimal mittelalterliches Kirchenrecht
José Luis Egío García	280	Towards a New Narrative of Natural Law Thinking in Early Modern Scholasticism
Aleksi Ollikainen-Read	284	Paradigm Choices in Anglo-American Law of Obligations
Peter Collin	286	How to Describe the Law of the Welfare State?
Gerd Bender	288	Im Labyrinth
Jan-Henrik Meyer	291	A Plea for More Historical Awareness in Environmental Law

Guido Pfeifer	296	(No) Hard Feelings! Philipp Ruch, »Ehre und Rache«
Karla Escobar	297	Agresivamente histórico y global John Brooke et al. (eds.), State Formations
Georg May	300	Kanonistik im Spiegel von Kanonisten Philipp Thull (Hg.), 60 Porträts aus dem Kirchenrecht
Elisabetta Fiocchi Malaspina	305	Forme di proprietà nel tempo e nello spazio Georgy Kantor, Tom Lambert, Hannah Skoda (eds.), Legalism: Property and Ownership
Daniel S. Allemann	308	Eine Genealogie spanischen Rechtsdenkens Rafael Domingo, Javier Martínez-Torrón (Hg.), Great Christian Jurists in Spanish History
Manuela Bragagnolo	310	Un atto culturale Hugo Beuvant et al. (dir.), Les traductions du discours juridique
Roland Scheel	312	Vom langsamen Werden dänischer Königsmacht Nils Hybel, The Nature of Kingship c. 800–1300
Philipp N. Spahn	315	Tripartite Legal Knowledge Stephan Dusil, Wissensordnungen des Rechts
Caspar Ehlers	317	Kanonisches Recht nach dem Investiturstreit Melodie H. Eichbauer, Danica Summerlin (Hg.), The Use of Canon Law in Ecclesiastical Administration, 1000–1234
Caspar Ehlers	319	Wer spiegelt wen? Lucas Wüsthof, Schwabenspiegel und Augsburger Stadtrecht
Caspar Ehlers	320	Flexible Prediger Cornelia Linde (Hg.), Making and Breaking the Rules
Victoria Barnes	322	Big Business Dave De ruysscher, Albrecht Cordes et al. (eds.), The Company in Law and Practice

Albrecht Cordes	324	Zünfte und Wirtschaftswachstum Sheilagh Ogilvie, <i>The European Guilds. An Economic Analysis</i>
Andrzej Gulczyński	327	Ein Kompendium in Wort und Bild Heiner Lück, <i>Der Sachsenspiegel</i>
Thomas Simon	329	Ohne Gleichen: württembergische »Ehrbarkeit« Nina Kühnle, <i>Wir, Vogt, Richter und Gemeinde</i>
Bernd Kannowski	332	<i>Vae cupidae legum iuventuti</i> – jugendgefährdendes Schrifttum! Gabriele von Olberg-Haverkate, <i>Die Textsorte Rechtsbücher</i>
Stéphane Péquignot	336	Pour une relecture des traités diplomatiques de la fin du Moyen Âge Gesa Wilangowski, <i>Frieden schreiben im Spätmittelalter</i>
Daniel S. Allemann	338	Re-reading Vitoria Francisco de Vitoria, <i>Relecciones jurídicas y teológicas</i>
Pamela Alejandra Cacciavillani	341	La importancia de no ser llamados <i>Indigenous Peoples</i> Irene Watson (ed.), <i>Indigenous Peoples as Subjects of International Law</i>
Petr Kreuz	342	Aus der polnischen Kriminalitätsforschung Pawel Klint, Daniel Wojtucki (Hg.), <i>Przestępczość kryminalna w Europie Środkowej i Wschodniej</i>
Otto Danwerth	345	Rebels With a Cause in Spanish America Gregorio Salinero, <i>Hombres de mala corte</i>
Luisa Stella de Oliveira Coutinho Silva	349	Vozes femininas em espaços imperiais Nora E. Jaffary, Jane E. Mangan, <i>Women in Colonial Latin America, 1526 to 1806</i>
Heinz Mohnhaupt	351	»Wer Hoheitsrechte hat, visitiert« Anette Baumann, <i>Visitationen am Reichskammergericht</i>

Claudia Curcuruto	353	Rechtseinheit durch Reichsgerichte Josef Bongartz et al. (Hg.), Was das Reich zusammenhielt
Osvaldo Rodolfo Moutin	355	Barely Known Old Legal Texts Come to Light Juan Fernando Cobo Betancourt, Natalie Cobo (eds.), La legislación de la arquidiócesis de Santafé
Manuel Bastías Saavedra	357	Property and the Early Modern Condition Alan Greer, Property and Dispossession
Thomas Duve	359	Verstanden? Brian P. Owensby, Richard J. Ross (Hg.), Justice in a New World
Michele Graziadei	362	Not on the Other Side of the Channel! Martin Flohr, Rechtsdogmatik in England
Rafael Diego-Fernández Sotelo	365	El concepto de <i>formación protoestatal</i> en Hispanoamérica Horst Pietschmann, Acomodos políticos, mentalidades y vías de cambio
Tilman Reppen	368	Why Obey? Stefan Schweighöfer, Die Begründung der normativen Kraft von Gesetzen bei Francisco Suárez
Francesco Giuliani	370	A Global Perspective on <i>De Propaganda Fide</i> Giovanni Pizzorusso, Governare le missioni, conoscere il mondo nel XVII secolo
Manuela Bragagnolo	372	Probabilmente moralmente legittime Stefania Tutino, Uncertainty in Post-Reformation Catholicism
Albrecht Cordes	375	CHILE und die Geschichte des Versicherungsrechts Phillip Hellwege (Hg.), A Comparative History of Insurance Law in Europe ders., The Past, Present, and Future of Tontines ders., A History of Tontines in Germany
Gustavo César Machado Cabral	378	Clerical Misconduct in Colonial Brazil Pollyanna Gouveia Mendonça Muniz, Réus de Batina

Filippo Ranieri	380	Englische Verfassung <i>à la française</i> Tanguy Pasquiel-Briand, La réception de la Constitution anglaise au XIX ^e siècle
Stefan Kroll	384	Zerbrochen am Kontext Jennifer Pitts, Boundaries of the International
Justine Keli Collins	386	To be or not to be a True Born Englishmen Dana Y. Rabin, Britain and its Internal Others
Heinz Mohnhaupt	387	»Am Ende stritt man um Akten« Alexander Denzler, Über den Schriftalltag im 18. Jahrhundert
Carlos Petit	390	Luces y sombras sobre la <i>Sombra de Vitoria</i> Ignacio de la Rasilla del Moral, In the Shadow of Vitoria
Mariana Dias Paes	392	Novas perspectivas para uma História Atlântica do Direito Mariana Pinho Candido, Fronteiras da escravidão Cristina Nogueira da Silva, A construção jurídica dos territórios ultramarinos portugueses Flávia Maria de Carvalho, Sobas e os homens do rei
Mathias Reimann	397	How the United States Failed to Establish a »Government of Laws« James R. Maxeiner, Failures of American Methods of Lawmaking
Paolo Becchi	401	Was ist uns Thibaut? Christian Hattenhauer et al. (Hg.), A.F.J. Thibaut (1772–1840). Bürger und Gelehrter
Adriane Sanctis de Brito	404	In the Name of Civilisation Michel Erpelding, Le droit international anti-esclavagiste des »nations civilisées«
Matthias Schwaibold	406	Vorgebliche Antworten auf eine falsche Frage Daniel Arne Wyss, Wie viel Bluntschli steckt in Huber?
Maddalena Burelli	410	Una dichiarazione di indipendenza dimenticata Lucrecia Enríquez, Historia, memoria y olvido del 12 de febrero de 1818

Raquel R. Sirotti	412	Built to Colonize Dior Konaté, Prison Architecture and Punishment in Colonial Senegal
Bruno Lima	414	Liberated Africans With Rights? Beatriz Mamigonian, Africanos livres: a abolição do tráfico de escravos no Brasil
Christoph Resch	416	Vertragsgeschichte mit Charles Dickens Anat Rosenberg, Liberalizing Contracts. Nineteenth Century Promises
Michael Stolleis	418	»Im Reiche und in den Ländern müssen nach Maßgabe der Gesetze Verwaltungsgerichte ... bestehen« (Art. 107 Weimarer Reichsverfassung) Karl-Peter Sommermann, Bert Schaffarzik (Hg.), Handbuch der Geschichte der Verwaltungsgerichtsbarkeit
Leticia Vita	420	Volver a los clásicos, volver a Sinzheimer Otto Ernst Kempfen, Hugo Sinzheimer
Simon Groth	424	Wie wir wurden, wer wir waren Johannes Liebrecht, Die junge Rechtsgeschichte
Milan Kuhli	426	Diskursgeschichte des Völkerstrafrechts Annette Weinke, Gewalt, Geschichte, Gerechtigkeit
Michael Stolleis	429	Der Strom kommt aus der Steckdose Dirk van Laak, Alles im Fluss. Die Lebensadern unserer Gesellschaft
Warren Swain	432	»The narrow ways of English folk« Mark Lunney, A History of Australian Tort Law 1901–1945
Valeria Vegh Weis	434	»Haz lo que digo y no lo que hago« Daniel Brückenhaus, Policing Transnational Protest
Philipp Siegert	436	Öffentliches Recht in Frankreich, 1914–1918 Elina Lemaire (Hg.), La Grande Guerre et le droit public Comité d'Histoire du Conseil d'État (Hg.), Le Conseil d'État et la Grande Guerre

- Anna Clara Lehmann Martins** 439 A »diabolical Constitution« in Mexico
Carmen-José Alejos Grau, Una historia olvidada e inolvidable
- Rahela Khorakiwala** 441 The Historicity of Law in India
Aparna Balachandran, Bhavani Rashmi Pant (eds.), Iterations of Law: Legal Histories from India
- Marcelo Neves** 443 Constituição de Weimar, presente!
Udo Di Fabio, Die Weimarer Verfassung
Horst Dreier, Christian Waldhoff (orgs.), Das Wagnis der Demokratie
- Stefan Kroll** 446 Does the Present Matter?
Marcus M. Payk, Frieden durch Recht?
- Hendrik Simon** 448 Das Alte in der neuen Ordnung
Oona A. Hathaway, Scott J. Shapiro, The Internationalists
- Jasper Kunstreich** 451 Against Theory?
Felix Lange, Praxisorientierung und Gemeinschaftskonzeption: Hermann Mosler
- Thomas Clausen** 453 From Prussia to the People's Court
Tilman Pünder, In den Fängen des NS-Staates

Anette Baumann 458 Visuelle Evidenz.
Beobachtungen zu Inaugenscheinnahmen und
Augenscheinkarten am Reichskammergericht
(1495–1806)

Abbildungen 462 illustrations

Abstracts 465 abstracts

Autoren 472 contributors

Abstract

This article reports on the state of prosopographical research on Portuguese university-educated («learned») jurists, which is particularly advanced due to the specific Portuguese source situation. A number of substantial studies have employed digital tools to analyse and visualise the social backgrounds and career patterns of law students, jurists serving as royal magistrates, and high court judges from the 17th to the 19th centuries. A current project on the authors of legal doctrinal works reveals the thematic preoccupations of Portuguese jurists over the period studied. Beyond their immediate thematic foci and methodological advances, these studies also make substantial contributions to our understanding of the actual practices of government, including the relationship between Portugal's overseas territories and the metropole.

Keywords: Prosopography, digital humanities, early modern Portugal, University of Coimbra, royal judges



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Thirty Years of Studies on Prosopography of Portuguese Early Modern Jurists

1 The »prosopographical project«

Prosopographical studies of Portuguese early modern jurists have made remarkable progress in the last two decades.

At the start of this increased attention being paid to legal scholars' biographies was the perception of their importance for what, very simplistically, has been called the European *ius commune*. From the beginning of the second millennium onwards, this complex of norms was created and disseminated by university-educated lawyers. This learned law was not the only, or even the most pervasive, of European legal orders at the time, since the social domain of its validity corresponded to a communicative sphere shared by only a few thousand specialists all over Western Europe.¹ Nor was there much overlap between this social elite, distinct because of its legal culture, and the European political and social elites. As prosopographical studies show, many jurists came from non-noble social backgrounds. However, they typically came to occupy positions as counsellors of secular or ecclesiastical leaders at a relatively young age, thereby gaining decisive power to shape political power and its practice. The jurists' self-sufficiency was further reinforced by a strong corporative spirit, to which their networks contributed greatly. These networks effectively spanned the political spaces of kingdoms, principalities, seigneuries and cities, and bridged the divide between civil and ecclesiastical power.²

In the early 1990s, I presented a first methodological outline of how the prosopographical method might be applied to this elite.³ These ideas were the product of joint reflections with Johannes-

Michael Scholz, who had developed a prosopographical project on the Spanish jurists of the 19th century at the Max Planck Institute for European Legal History in the 1980s. Also in the 1980s, Filippo Ranieri launched an important quantitative study, with computer support, of the literary production of early modern jurists in various European states,⁴ which led him to reflect on the methodologies of this group's historiographical analysis.⁵

This is what led to the development of the project *Storia Iurisprudentiae Lusitaniae Antiquae* (S.I.L.A.), a database of early modern Portuguese jurists that allows us to look beyond the biographies of a few well-known individuals and to trace a picture of the whole body and of its members' doctrinal production. This project was initially undertaken in cooperation with undergraduate students of the Department of History of the Faculdade de Ciências Sociais e Humanas of the Universidade Nova de Lisboa, some of whom went on to research in this field during their postgraduate and doctoral studies.⁶ Therefore, one can fairly say that the current state of the prosopographical study of jurists in Portugal was born from this collective enterprise of the late 1980s and early 1990s.

2 The prosopographical work of Joana Estorninho, Nuno Camarinhas and José Subtil

Two young researchers who had participated in the S.I.L.A. project, Joana Estorninho de Almeida and Nuno Camarinhas, pursued lines of research related to the world of the *letrados*, the »lettered«

* To our great sadness, António Manuel Hespanha passed away during the process of preparing the manuscript for publication. The text was thus finalised by the editorial team.

1 On these methodological assumptions, see HESPANHA (2018) 332–56.

2 FAYARD (1979); PELORSO (1980); VOLPINI (2004).

3 Published as HESPANHA (with ÂNGELA BARRETO XAVIER and CARLA ARAÚJO) (1992). The paper was originally presented at the conference *L'État moderne et les élites: apports et limites de la méthode prosopographique* (Centre de Recherches Historiques et Juridiques, Université Paris I, October 1991).

4 RANIERI (1982) 293–322.

5 RANIERI (1985) 83–105.

6 At the Instituto de Ciências Sociais, Universidade de Lisboa, I directed the first phases of the research project *Optima Pars*, which is devoted to the study of early modern social elites. In this project, the prosopography of jurists remains a key area of research.

or »learned« (that is, university-educated) jurists, in their later studies.

Joana Estorninho dedicated her master's thesis to the community of students of canon and civil law (*canonistas* and *legistas*, respectively) at the University of Coimbra in the 17th century, using the university archive to explore their enrolment and processing the data with the methods of quantitative history.⁷ The university of Coimbra's faculties of canon and of civil law were at the time the only place in Portugal where one could study law. While Estorninho looked at the law students' entry into the university, Nuno Camarinhas, on the other hand, examined – in both his master's and PhD dissertations – the Coimbra graduates who took the entrance exam for a career as a royal learned judge (the so-called *leituras de bacharéis*, literally »bachelors' lectures«). In his doctoral dissertation,⁸ he offered a very broad study of the careers of royal magistrates during the 17th and 18th centuries. In what constitutes one of the few comprehensive studies of the royal magistracy of any early modern European monarchy, he identified career models and patterns on the basis of the prosopographical study of this community of *letrados*. José Subtil, another researcher who had participated in the *S.I.L.A.* and *Optima Pars* projects (the latter a general study of the Portuguese early modern social elites) developed a dictionary of the high court judges (*desembargadores*) of the metropolitan and overseas supreme courts between 1640 and 1834, thus covering the last two centuries of the Portuguese monarchy and the first decade of the liberal regime.⁹ In subsequent works, he also dealt with the crown-appointed judges in courts of first instance (*juízes de fora*) in the kingdom of Portugal and in *ultramar*, the Portuguese overseas dominions.¹⁰

In addition to his prosopographical work on the royal magistrates, Nuno Camarinhas also edited an important set of manuscripts in the Biblioteca Nacional de Lisboa (originally from the library of a Benedictine abbey of Alcobaça) that contains a huge collection of biographical data on royal magistrates who served in *lugares de letras* (positions for university-educated lawyers). This *Memo-*

rial de Ministros was the work of two Benedictine monks of Alcobaça Abbey in the second half of the 18th century.¹¹ In addition to making this monumental repository of information on royal judges of the »corporate monarchy« available to the public, Camarinhas systematized, indexed, and above all verified the data.

Taken together, these studies cover a large part of the early modern community of Portuguese learned jurists. They also include law students who, even without completing their training, played an important role in the dissemination and mediation of learned law, acting as clerks, prosecutors and justice officers in royal, seigneurial, municipal and ecclesiastical justice. Less is known about the jurists serving the Church or in private households, or about lawyers practicing at the bar.

Thus, the prosopographical studies that have already been (or are currently being) done represent a significant mass of individuals, although there is some overlap between subgroups covered by the different studies (see Table 1 and Figure 1).

Subgroups	Number of individuals	Data in
Law students (both faculties) at Coimbra, 1553–1771*	280129	Estorninho
Students of law matriculated in the first-year course (<i>Instituta</i>), 1600–1650	967	Estorninho
Sample of students of law (1600–1650)	240	Estorninho
University-educated jurists (<i>letrados</i>) until the end of the 18 th century	6684	Camarinhas
<i>Letrados</i> active as royal judges (1620–1800)	4513	Camarinhas
Bachelors of law not active in courts (1610–1827)	1597	Camarinhas
<i>Desembargadores</i> (high court judges) (1640–1820)	1763	Subtil
Authors of doctrinal legal writings	1331	<i>S.I.L.A.</i>

* No study has yet attempted to cover the group as a whole.

Table 1: Numerical sizes of subgroups studied.

7 ESTORNINHO DE ALMEIDA (2004). A useful summary of one aspect of her study is available in English; see ESTORNINHO DE ALMEIDA (2007).

8 CAMARINHAS (2007a), published in Portuguese in 2010 (CAMARINHAS

[2010a]) and in French in 2012 (CAMARINHAS [2012]). For an English summary of some of his findings relating to a sample of judges from the first decade of the 18th century, see CAMARINHAS (2007b).

9 SUBTIL (2010a).

10 SUBTIL (2017).

11 CAMARINHAS (2017).

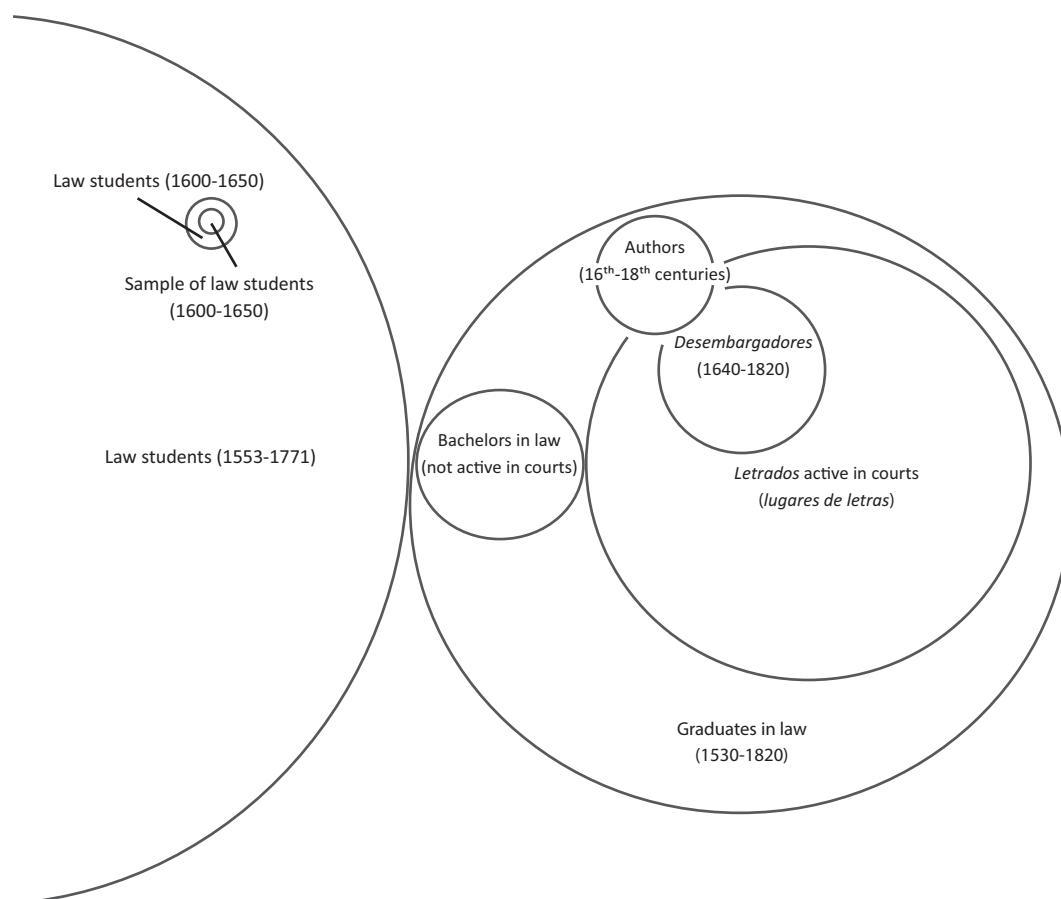


Figure 1: Relationships between the subgroups studied.

3 The world of the law students

Joana Estorninho's book *A Forja dos Homens. Estudos Jurídicos e Lugares de Poder no Séc. XVII* («The forge of men. Legal studies and places of power in the 17th century»),¹² opens with a description of the current state of research on the sociology of early modern European universities. It briefly describes the results of the work of Lawrence Stone,¹³ Roger Chartier and Jacques Revel,¹⁴ as well as Willem Frijthoff's research,¹⁵ on the significant increase in university enrolment by the middle of the 16th century, its stabilization and eventual decline one hundred years later. These scholars considered the growth in university enrolment to have been a consequence of the increasing demand for university-educated personnel – especially jurists –

to fill the posts created by the growing bureaucratic structures of royal administrations and the Protestant and Catholic Churches. After these vacancies had been filled, the market for lawyers became saturated, despite other employment opportunities opening up for them in private households, which followed the examples of other royal governments and Churches, or at lower levels of administrative hierarchies. The latter were increasingly occupied by jurists who were less qualified, lacked a powerful patron or had not completed their legal studies.

Estorninho's aims were, first, to compare the data on the Portuguese students of canon or civil law with that on those from other Western European countries regarding the so-called «educational revolution» and, second, to study the students' origins and their professional careers after attend-

12 ESTORNINHO DE ALMEIDA (2004).

13 STONE (1964).

14 CHARTIER/REVEL (1978); JULIA/REVEL (1986).

15 JULIA/REVEL (1986).

ing university. Her study examines a sample of 240 students enrolled in the propaedeutic course of *Instituta* during the first half of the 17th century (1600–1651). Estorninho concludes that, in terms of the changing levels of matriculations over the course of the 16th and 17th centuries, Portugal followed the most common features of university attendance in Southern Europe, both in terms of the increase and decline of enrolments in general, and in the overwhelming proportion of students attending faculties of law (80%). Also common across Europe was a clear prevalence of students studying canon law over those studying civil law (80% and 20%, respectively) (42 ff.).

According to the university statutes of both 1559 and 1591,¹⁶ the faculty of canon law (*Canones*) at Coimbra consisted of seven *cathedrae*. Five of these were »major« chairs, to which professors were appointed for life: two of *Decretais* (*Prima* and *Vésperas*), *Decreto* (*Terça*), *Sexto* (*Noa*) and *Clementinas*. Appointments to the two »minor« chairs (or *catedrilhas*) of Decretals were made for four years.

The faculty of civil law (*Leis*) also consisted of seven *cathedrae*. The five major ones were *Digesto esforçado* or *Infortiatum* (*Prima*), *Digesto Novo* (*Vésperas*), *Digesto Velho* (*Terça*), *Volumen* ([*Parvum*] i. e., on the Justinianic Code's last three books), and *Código*, and the two *catedrilhas* were of *Instituta*.

There was a hierarchy of *cathedrae*, based on their prestige (and salary), which gave rise to a kind of *cursus honorum* in the career progression of lecturers. In the faculty of *Leis*, the progression was from *Instituta* to *Código*, on to *Volumen*, *Digesto Velho*, *Vésperas* and *Prima*; in the faculty of *Canones* from *Instituta* to *Clementina*, *Decreto* and *Vésperas* to *Prima*.¹⁷

The contents of each course were fixed by the university council (*Conselho de conselheiros*), occasionally with input from the students and the advice of the lecturer.¹⁸ The rector regularly visited classes unannounced in order to supervise the lecturers' fulfilment of their duties.

In general, not all titles of the texts being taught were explained in the classroom. Instead, the lecturer selected some for in-depth exegesis that served as examples of what jurists would have to do in their practice.¹⁹ The exception was the course of *Instituta*, in which the brevity and introductory nature of the Justinianic *Institutes* both enabled and necessitated the discussion of the whole work. Teaching of the Code and the Digest was limited to a number of titles selected by the university council for each year from the sections on inheritance and successions, sales and certain other contracts, mortgage and pledge, the law of property and prescription. In *Digesto Velho*, the principal topics were procedural matters and private law. In *Volumen* (which was optional), the main theme was Roman public law, a matter that was considered of minor importance and somewhat eccentric.²⁰ Teaching had to be oral and in Latin, but some lecturers gave the students written versions (such notes, outlines or drafts), which survive in Coimbra's archive by the hundreds, with titles such as *Sequitur materiam ...*, *Ad textum ...*, and sometimes *tractatus*.²¹

In the classes, lecturers explained the texts, performed their analysis, quoting older and a few modern authorities. The emphasis, however, clearly lay not on the secondary references, but on students becoming experts on the original sources (*bons textuais*).²² Ordinary lessons were given by *catedráticos*, those holding chairs. Extraordinary

16 Estatutos da Universidade de Coimbra (1559), Coimbra 1963; Estatutos da Universidade de Coimbra confirmados por el rey Dom Phelippe primeiro deste nome, nosso Senhor em o anno de 1591. Coimbra: Antonio de Barreira 1593.

17 In Salamanca, whose faculties of law influenced the teaching at Coimbra, lecturers were elected by their students after the various candidates had given a public demonstration of their knowledge by discussing a theme drawn by lot on the eve of the test. From 1623 onwards, professors were appointed by the Royal Council, to

which the candidates' files were sent along with a summary of their public lecture and the subsequent discussion. Between 1632 and 1642, the electoral system was reinstated. See ALONSO ROMERO (2012c) 219. As in Coimbra, appointments in the major chairs were for life (*cátedras perpétuas*: *Prima* and *Vésperas*) with retirement after twenty years of lecturing. Appointments to the *catedrilhas* were for four years (ibid., 215).

18 Details of examinations are outlined in detail in the university's statutes, in this case those of 1591. Estatutos 1591, II t. XXIV, § 9.

19 In Salamanca, the comprehensive explanation of the *Instituta* was common until 1561. From then on, only about one third (corresponding to subjects like wills, obligations, stipulations and contracts) was taught. The remaining subjects could be lectured on by candidates for university positions; see ALONSO ROMERO (2012c) 223.

20 ALONSO ROMERO (2012c) 209–225, 324.

21 ALONSO ROMERO (2012b) 227; see also HESPAÑHA (2019b).

22 *Modo de ler* (»way of lecturing«), Estatutos 1591, III, t. X, 84.

lessons or additional *repetições* (public lectures) could be given by graduates (*licenciados*) or holders of a bachelor's degree who had completed eight years of courses, under license of the rector. The holders of major chairs were supposed to give public lectures about the subjects they would teach the following year.²³ The lecturers of minor chairs had to present summaries of the subjects that they were teaching, which were then discussed by up to three doctors of the faculty.²⁴

In the first year, students from both faculties attended the preparatory lectures of *Instituta*. After that, the two faculties' courses diversified, as can be seen in Table 2.

Exam success also involved a technique of independent learning on which a specialized literature existed (*modo de pasar*). This taught the selection of readings, authors and themes, and contained tips on memorization, reasoning and argumentation that complemented the general education of intellectual skills that students had received whilst studying the *Artes liberales*.²⁵

In the fifth year (according to the Statutes of 1559, the fourth), the students took the first exam, the *conclusões*,²⁶ which was mandatory before applying for the bachelor's degree (*bacharel*) in the sixth year. For *conclusões*, candidates had to present certificates of attending the courses of the first five

years and show that they owned the mandatory source texts (*Abade Panormitano* or *Bártolo*, depending on the faculty²⁷). Students then had to argue nine conclusions on subjects chosen by the rector, which they had to discuss with three classmates. There was no final vote.

The bachelor's degree required the attendance of six years of courses, including the one-year course of *Artes liberales* (in Coimbra or Évora) for those who had followed it.²⁸ Having proved that he fulfilled the requirements, the candidate gave a public lecture on a text either from the *Decretales* (for *canonistas*) or from a book of the *Corpus Iuris Civilis* (for *legistas*). The specific topic was chosen by the student himself from among three identified by opening the book randomly in three places. The lecture lasted one hour, followed by another hour and a half of discussion with three classmates and three doctors of the faculty, although other doctors present could also intervene. Candidates were graded AA (approved for the degree) or RR (disapproved).²⁹

With the bachelor's degree, one could practice as a lawyer or give classes as an auxiliary or substitute professor in minor chairs (*catedrilhas*). The student then began a further period of three years to prepare for exams for the higher degrees.³⁰ Candidates for a higher degree were supposed to

	Canones	Leis
1 st year	<i>Instituta</i>	<i>Instituta</i>
2 nd year	<i>Prima</i> and <i>Véspera</i> (<i>Decretales</i>) + <i>Decretum</i> (<i>Terça</i>) +	<i>Prima</i> (<i>Digestum Infortiatum</i> , D. 24.3.3 to D. 38) and <i>Véspera</i>
3 rd year	<i>Sextum</i> (<i>Noa</i>) + <i>Clementinae</i> + 2 <i>catedrilhas</i> (<i>Decretales</i>)	(<i>Digestum Novum</i>) (D. 39 to D. 50) + <i>Digestum Vetus</i> (D. 1 to D. 24.3.2; <i>Terça</i>) + <i>Volumen Parvum</i> (Cod. 10-12) + <i>Codex</i>
4 th year	<i>Prima</i> and <i>Véspera</i> +	<i>Esforçado</i> (<i>Prima</i>) +
5 th year	<i>Decretum</i> (<i>Terça</i>) +	<i>Digestum Novum</i> (<i>Véspera</i>) +
6 th year	<i>Sextum</i> (<i>Noa</i>) + <i>Clementinae</i>	<i>Digestum Vetus</i> (<i>Terça</i>) + <i>Volumen Parvum</i> + <i>Codex</i>

Table 2: Lecture courses in the faculties of law at the university of Coimbra in the 16th century.

23 Followed by a discussion with two doctors of the same faculty. Ibid. III, t. XV, 87v.

24 Estatutos 1591, III, t. XVI, 88.

25 BECK VARELA (2016); BECK VARELA (2018).

26 Estatutos 1591, III, XLIII, 107v.

27 Ibid.

28 Ibid. III, t. XLII, 107. The Statutes of 1559 envisaged only five years (c. 99); the division of chairs diverged somewhat because that of *Instituta* was

integrated differently in each of the courses, which had a different structure from the very first year.

29 Estatutos 1591, III, 109v.

30 On *passantes*, see ALONSO ROMERO (2012c) 231 ff.; also BECK VARELA

participate in academic life, listening to and eventually discussing public lectures (*repetitiones, relectiones*). They also had to give a public lecture themselves, accumulate knowledge and experience and establish a reputation. *Repetitiones* had a certain prestige, because they were sometimes printed and potentially constituted the starting point of a monograph.

In order to use his academic degree outside the university, a student had to undergo the *formatura*, although this was not necessary to be a candidate (*opositor*) to chairs in the school.³¹ The *formatura* was introduced by the statutes of 1591. It required a total of eight years of courses, two of them after gaining the bachelor's degree: in *Canones* for *legistas* and in *Leis* for *canonistas*. The exam itself consisted in a lecture on a subject drawn twenty-four hours earlier on *Decretales* (for *canonistas*) or on a text from the *Corpus Iuris Civilis* drawn by the previous year's bachelors (for *legistas*). The formalities were the same as for the bachelor's exam.

However, only those who gained the degree of the *licenciatura* (»licence«) were considered »graduates«.³² The *licenciatura* required a total of nine years of study, three of them after the bachelor's grade: for *canonistas*, two in *Leis* and one reading or revising the syllabi of the courses; for *legistas*, two in *Canones* (except *Decretum*) and one residing in the university (except for clergymen or holders of benefices) and studying *Canones*. In addition to an examination *de vita et moribus*, the *licenciatura* consisted of three parts: an exam *de suficiência* (testing the candidate's legal knowledge), a public lecture, and finally an examination by a commission behind closed doors (*exame privado*).

The *exame de suficiência* consisted of two one-hour lectures (*lições*) on a text, randomly selected one day earlier, from the *Decretales* (for *canonistas*) or from the *Digestum* and *Code* (for the *legistas*), which were discussed with classmates and doctors of the faculty. A year of lecturing could be substituted for one of the *lições*.

The public lecture (*repetição*) was the most formal academic act. Candidates chose the text

on which they lectured themselves. The conclusions or theses to be defended were made public and printed in advance, so that they could be publicly disputed. The lecture lasted an hour and a half, and was subsequently discussed by four classmates. Finally, a »clean« version had to be submitted to the university archive.³³ The whole act was punctuated by shawns and trumpets sounding in assigned spots of the city.

The last part of the *licenciatura* examination was the *exame privado*.³⁴ Candidates had to submit certificates having passed the previous parts and then held two lectures, the *canonistas* on the *Decretales* and the *Decretum*, and the *legistas* on the *Digestum vetus* and the *Code*. The lessons were discussed by four doctors, two from each faculty. The committee voted on a grade (AA or RR) for the exam. The degree was awarded in the university chapel.

Gaining the doctorate required a ceremony rather than an examination.³⁵ The candidate had to have the *licenciatura*, be over 25 years old and needed to be sponsored by a nobleman or another »honourable« person. The ceremonial was full of pomp but did not include any testing of legal knowledge or methods. It began with *laudes* and prayers, masses and academic processions. The doctorate was a ritual that only a small number of graduates underwent due to the expense involved, including taxes, tuition fees, liturgical offerings and the cost of the ceremonies.³⁶

Working on a sample of c. 25% of the students enrolled in *Instituta* between 1600 and 1651, Joana Estorninho tried to carry out an ambitious research program on the regional and social origins of students, the profile of their academic paths and their professional careers. The problem she faced was the lack of data. The sources that cover the whole body of students, the university records, are rather laconic about issues like social origin. Furthermore, they naturally do not contain data on the students' post-university careers. Sources that could tell something about the latter – such as records of the royal archive concerning royal offi-

(2016); ESTORNINHO (2004) 48. In Salamanca, the duration of the bachelor's studies was six years before 1522 and five years after that date. The doctorate was prepared in four years, and thus in total took nine to ten years.

31 Estatutos 1591, III, XIX, 88v and III, XLIV, n. 8, 110; Estatutos 1559, c. 102.

32 Estatutos 1591, III, XLV, 110v.

33 Estatutos 1559, c. 103; Estatutos 1591, III, XLVI, 110v.

34 Estatutos 1559, c. 104, 292–93; Estatutos 1591, III, XLVII, 111v.

35 Estatutos 1559, c. 105, 293; Estatutos 1591, III, XLVIII, 113v.

36 ALONSO ROMERO (2012d) 406–407.

cials – do not exist for a good part of the individuals, namely for those who did not seek or find employment in the royal administration. Estorninho managed to fill some of the gaps using the records of the investigations (*habilitações*) for entry into the Inquisition. However, ecclesiastical, municipal, or even personal archives could not be considered within the scope of a feasible study. Nevertheless, she was able to illuminate some of the proposed themes and reach some conclusions.

First – as Richard Kagan ascertained for Spain³⁷ – about a quarter of those enrolled in *Instituta* did not continue their studies. Even of those who did go on, about 60% did not obtain a degree (59 ff. and chart on page 60). It should be noted that *Instituta* was supposed to provide an introduction to legal studies. Although, in practice, professors often focused their lectures on a few chapters or titles – as critics of the 18th century complained – these failed students left the university with basic legal knowledge that, together with the studies they had done in the preparatory courses of the *Artes* or similar ones, was enough to hold posts at the lower levels of the administration of justice or of administration in general.

Estorninho's findings also confirmed the students' preference for the faculty of *Canones*, perhaps because it provided access to the market of ecclesiastical positions, though it was more demanding than *Leis*. Of the students enrolled in one of the two faculties (discounting those who only enrolled in *Instituta* and did not continue beyond it), 18% preferred *Leis*, 74% chose *Canones* and 7% graduated in both courses (*in utroque iure*). If we count only the graduates, the difference decreases, because proportionally more students in *Leis* than in *Canones* obtained a degree. Of the degrees obtained, almost all (88%) are of the two lower levels (*bacharelato* and *formatura*). Only 4% obtained the doctorate, which was indispensable for an academic career or for becoming a bishop.

Another theme of Estorninho's study is the geographical origin of students, since this was recorded in the books of immatriculation. Estorninho notes, firstly, the great geographical dispersion of the students' origins, suggestive of a less centralized territory. However, if we compare the

numbers of students from each region with the areas' respective population, we actually find a low regional diversity of recruitment. The largest urban centres (Lisbon, Porto and Coimbra), cultural centres (like Évora) and, generally, the north and centre of the kingdom provided proportionately higher numbers of students (see maps, 67–71). One possible reason for this might have been the greater demand for *letrados* in the centres with more sophisticated administrative apparatus (73).³⁸

The social background of students is the Holy Grail of the social history of universities. However, the sources are very frugal in this regard. In Portugal, the records of the *habilitações* to join the Inquisition or of the processes of admission to serve as a royal judge (*leituras de bacharéis*) provide useful data, but they exist only for relatively few students. In Estorninho's sample, relevant information is only available for about a quarter of the individuals (but for 39% of the graduates, about whom there is more information). However, fees for entering university exams or for the application to become a royal judge attest to elitism both in access to the university and subsequent careers. In addition, admission to some colleges and to degrees (as well as, after graduating, admission to royal service) required »purity of blood« (i.e., the absence of Jewish or Muslim ancestors) and that the candidate's father and grandfather should have had a *profissão limpa*, that is, had not been manual labourers. Given the problematic nature of the sources, Estorninho wisely decided not to attempt to draw general conclusions (74 ff.).³⁹

After briefly describing the positions and occupations available to university graduates or even to non-graduates (chapter III), Joana Estorninho presents the results of her study regarding the professional destinations of undergraduates and graduates. For 84 of the 141 students who did not graduate, she managed to obtain sufficient reliable data on their professional destinations. Of these, almost half obtained junior jobs in the courts (of these, 51% were notaries or scribes), especially in district courts; a little more than a quarter became tax officers (*oficiais da fazenda*). 7%

37 KAGAN (1981).

38 On students' overall regional origins, see FONSECA (1992) 547 ff. and FONSECA (1997).

39 On students' global social origins, see FONSECA (1992) 554 ff.

became clergymen or held ecclesiastical benefices, 9% served in seignorial or royal administration, and the remainder worked in various occupations, some for the military, one as a bookseller and another as an apothecary (94). The university studies even of those who did not graduate fulfilled the usual requisites for these posts, which were sometimes inherited or obtained as a dowry, by the resignation of the former owner⁴⁰ or were granted by royal donation as remuneration for services (100). Estorninho also found a few cases of the temporary acquisition of *serventias*, minor offices normally of notaries and scribes that were bought and sold (103).

Estorninho did, of course, also study the professional destinations of *canonistas* and *legistas* who did graduate (104 ff.). The source situation for this group is even more problematic, however, since many posts in larger ecclesiastical offices and benefices were granted by papal charter and therefore not recorded in the royal chancellery. Estorninho was thus able to obtain data for only 69 of the 99 graduates. About 15 who graduated in *Canones* followed an ecclesiastical career. The remaining 54, who graduated in *Canones*, *Leis* or *in utroque iure*, pursued secular careers (as learned judges, advocates in the royal courts, academics, members of local government, etc.), mainly in European Portugal, but some also in overseas territories. Some 10% held posts as notaries that they had been granted by the Crown.

In her conclusion, Estorninho highlights, first of all, how pursuing legal studies at university, irrespective of whether a (and which) degree was obtained, was an important factor of social mobility. Based on the examples she found, she demonstrates how the prestige of university studies⁴¹ facilitated the arrangement of a good marriage, including the receipt of a position as dowry that suited the groom's qualification, »Latinity« or the basic legal knowledge acquired by attending university lectures or participating in the academic *convivium*. Some positions or rewards could also be acquired through the support of fellow students or one's professors. The university functioned as an environment of socialization in which relations of friendship and patronage were established. Taking

a post in the burgeoning bureaucratic apparatus – of the Crown, the Church or at district level – was a launch platform for higher things. Through the temporary exercise of a post, one could acquire ownership of it and use it to access a more profitable or important position. The social visibility gained in public offices and the opportunity to become a patron and to distribute favours (or, on the contrary, to persecute and annoy) led to prestige within the community and, thereby, to the election to posts in territorial government.

Estorninho further highlights how legal knowledge validated by an academic degree automatically produced power. Holding a doctorate or lecturing at the university, exercising a magistracy, or acting as advocate (at least in the higher courts) actually raised a person to (non-hereditary) noble status according to the law. Social power arose also from the decisive importance that the intervention of jurists had in the determination of the law. In an uncertain, hermetic and complex legal order, the decision-makers' interpretative leeway was considerable. Due to their hermeneutic authority, the opinions of legal scholars at university, in court or in the bureaucratic corridors of power was immense. In fact, they held the monopoly of legal interpretation with an uncontested authority that led them to perceive themselves as »priests of the law« (*sacerdotes iuris*).

Apart from these conclusions, which are central to a sociological understanding of the body of Portuguese jurists in the early modern period, Joana Estorninho's book is of singular importance also to the prosopographical study of jurists. Firstly, she defines, with rigour, insight and realism, a methodology of prosopographical analysis of the environment of the group's formation – the university, a place of specialized academic formation but above all of socialization, and the platform for launching the students' professional careers. Secondly, she assesses the existence, reliability, possibilities and limitations of the historical sources, identifying the set of sources that can complement university records in order to answer the questions of the greatest interest for a social history of universities. Her analysis, based on a small but representative sample, serves mainly for this very pur-

40 Officially, the sale of offices was prohibited and thus often concealed behind the previous owner's »resigning« from the post.

41 On this, see also OLIVEIRA (1997) 667 ff.

pose, that is, to validate this method. Her interpretation of the results is based on an in-depth knowledge of institutional frameworks: (i) the organization of academic life in the period under study, both according to the statutes of the university of Coimbra and to the rules of practice she identified from the cases she examined; (ii) the access to legal positions – be they ecclesiastical, secular or in private administrations – and the status and *habitus* associated with them. The conclusions she draws are based on the fullest exploitation of the hermeneutic possibilities of the sources, while also maintaining due academic caution given the fragmentary nature of the available data.

All this turns the book into a methodological landmark not only in Portuguese historiography. Estorninho's methods can be used to replicate her study for other periods, such as from the last quarter of the 16th century until the Pombaline university reforms, or even later. The sources and their epistemic values remain constant during these centuries, as well as some of their limitations. The social status and symbolic capital of legal careers were relatively constant over time. What varied were the social conditions, though those changes were only minor.

4 The *letrados* in Nuno Camarinhas' works

The body of the *magistratos letrados*, the university-educated royal magistrates, was studied by Nuno Camarinhas, and one of its subgroups, the *desembargadores* (high court judges), by José Subtil.⁴²

The doctoral thesis of Nuno Miguel Camarinhas, prepared at the *École des Hautes Études en Sciences Sociales* (Paris), is a great prosopographical work in which data on the life and career of thousands of magistrates administering royal justice during the 17th and 18th centuries are analysed.⁴³ Camarinhas' analysis rests on an impressive source base. He combined the data from several books of records of *leituras de bacharéis* (the exams of candidates for the royal magistracy) conducted by the *Desambargo de Paço* with those

from the records of the royal chancelleries concerning the *ministros de letras*, the monumental *Memorial de Ministros* of Frei Luís de S. Bento (1723–1767), the *habilitações* of the Inquisition, the records of the military orders' chancelleries, and many more particular sources. From this wealth of information he reconstructed a body of individuals for the period from 1620 to 1800. The data was also entered into a relational database in a searchable format (37 ff.). The total number of individuals systematically studied – that is, the whole group of those who entered royal service as learned magistrates during the period from 1620 to 1800 – amounts to 4513. Camarinhas' work is thus not the analysis of a sample, but rather an examination of the entire community of *magistrados letrados*.

Despite the overwhelming volume of data, Camarinhas' research does not take only a macro-perspective; his use of tables and graphs does not preclude individual glimpses, charged with personalized and qualitative evaluations. He often emphasizes single cases, either typical or exceptional, letting the picturesque of concrete situations speak. Nevertheless, as these case studies are contextualized by an immense mass of other observations, the reader is fully aware of the meaning of each case analysis, as instantiation of a rule or as deviation, something that rarely occurs in works that are mainly based on case studies.

In his examination of the nature and geographical distribution of the royal magistrates' regional origins, Camarinhas (140) found that of those born in mainland Portugal, most came from cities and larger towns (1639 and 330 individuals, respectively), above all from the three largest cities, which were also the locations of the university (Coimbra, 223 individuals, equivalent to 5%) and of the high courts of justice: 945 (21%) from Lisbon, and 199 (4.5%) from Porto.

Figure 2 maps the royal learned magistrates' origins and shows that most of them came from north of the Tagus, which was also more populated than the kingdom's centre or south. However, as mentioned above, the districts of Coimbra and Lisbon were exceptions in this respect.

42 Several historians have dealt with this group as part of their researches: CARVALHO HOMEM (1985); CARVALHO HOMEM (2008); SUBTIL (2011). See also the studies of José Viriato

Capela, including the invaluable introductions to the several volumes of Padre Luís Cardoso's *memórias paroquiais*, which he is preparing for publication.

43 Published in Portuguese (CAMARINHAS [2010a]) and French (CAMARINHAS [2012]). His unpublished master's thesis is CAMARINHAS (2000a).

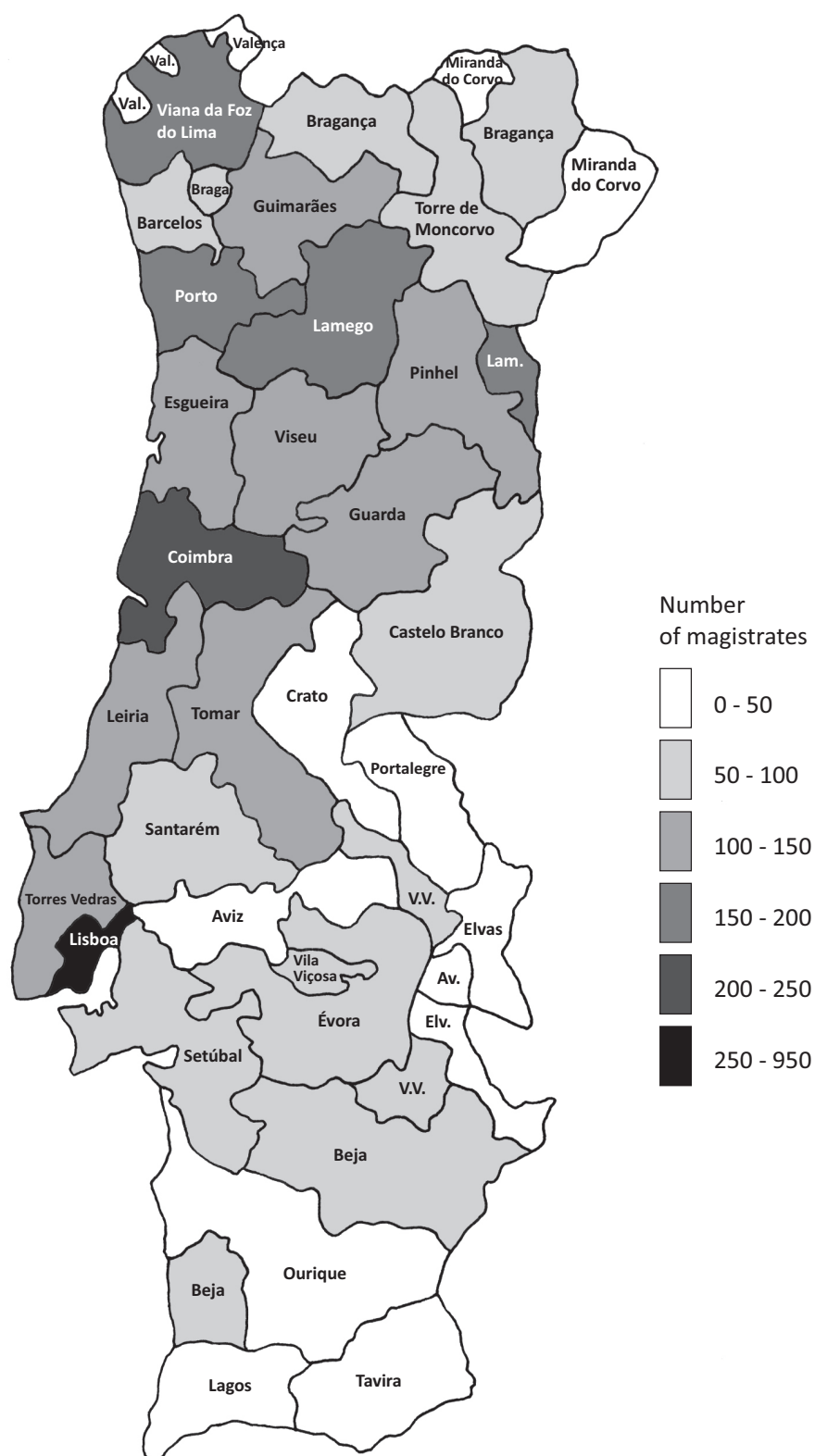


Figure 2: Regional origins of royal magistrates from the Portuguese Kingdom (1620–1800).
Source: Camarinhas (2010a) 138.

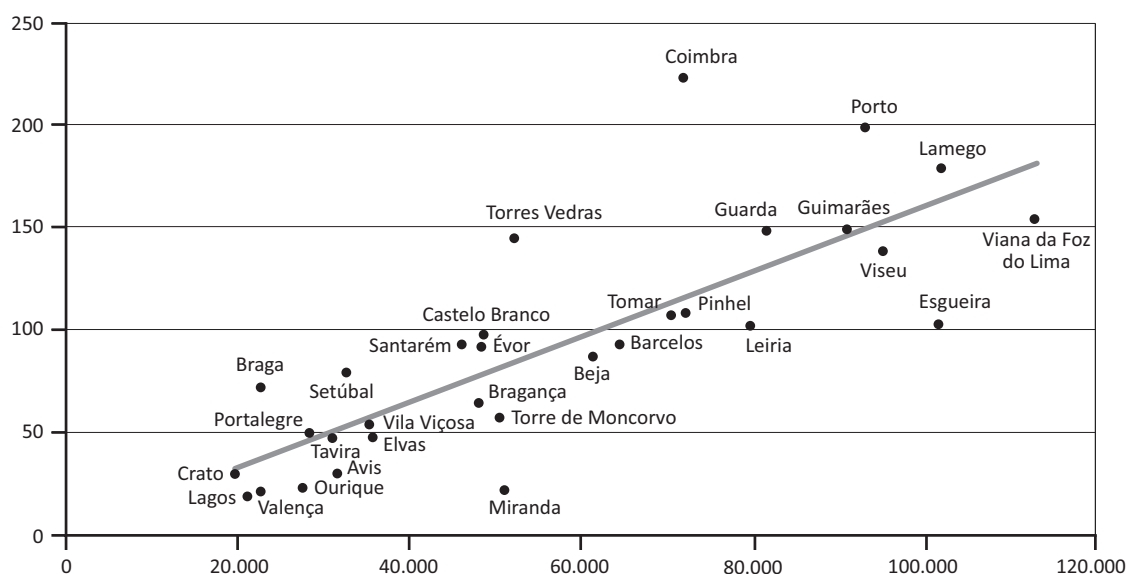


Figure 3: Regression number of literate magistrates x population (1620–1800) (using the population figures of c. 1700). Source: Camarinhas (2010a) 142.

Figure 3, however, shows that the relation between a town's population and the number of magistrates stemming from it could vary due to some variable (ϵ) that has not been considered. Some towns appear very clearly below or above the line of regression.

Camarinhas' research also revealed that the number of magistrates originally from Brazil grew over the period until they became the second-largest group (after those from Lisbon) from 1740 onwards. The likely reasons for this are the progressive growth of the Brazilian population and the increasing investment of local elites in bureaucratic careers in the course of the 18th century.

Regarding the magistrates' social origins, Camarinhas concluded that the sources were likely to contain information regarding the status of parents if the latter were jurists, *mecânicos* (skilled craftsmen and traders) or military officers. In these cases, candidates were likely to refer to a factor favourable to them. On the other hand, the *Desambargo de Paço* carrying out the *leituras de bacharéis* would not fail to record a potentially negative social origin (such as a father's or grandfather's »dirty« profession, or Jewish or Muslim ancestry). However, the information was not necessarily recorded if the status of the candidate's family was unlikely to affect their career either in a negative or positive way. Due to these imbalances, Camarinhas em-

ployed different statistical tools to process the data. What can be said is that, first, c. 13% of the total of magistrates were the children of jurists, c. 4% came from military families and only c. 0.33% had parents who were *mecânicos* – the latter's admission to the magistracy required a special dispensation, which the king often granted in return for the candidate's taking an overseas posting. Figure 4 illustrates the social origins of the candidates (where this information is available) who were not descended from jurists, military families, or *mecânicos*.

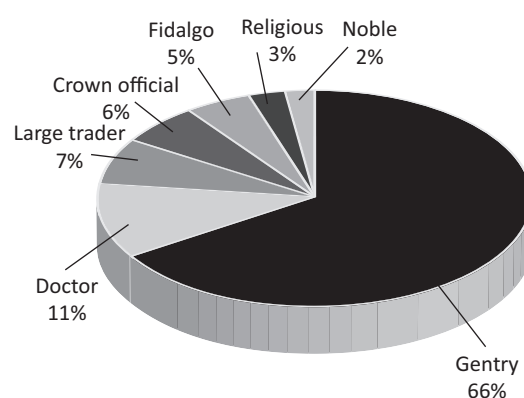


Figure 4: Social origins of royal magistrates, excluding jurists, military and *mecânico* families (1620–1800).

Overall, this confirms the elitist character of the group. As we see in Figure 4, this is not due to a preponderance of jurists' families, but rather because of the weight of magistrates came from the gentry. Descent from a family of jurists did make a difference, but not as far as access to the magistracy was concerned. Rather, it influenced the level of a new magistrate's first post and sped up his promotion to higher positions. For this reason, when repeating this statistical exercise for the senatorial group, the *desembargadores* – as Nuno Camarinhas did in his study – the proportion of those descended from lawyers nearly triples (Figure 5).

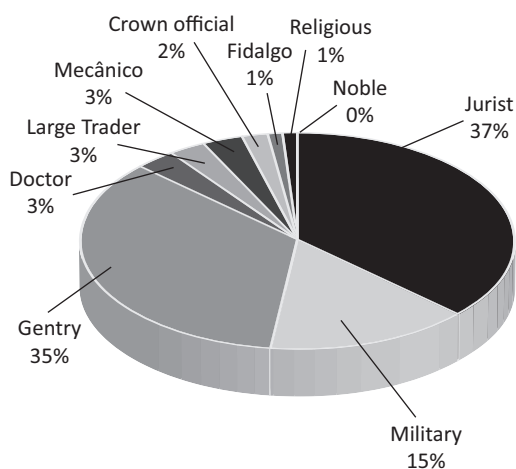


Figure 5: Social origins of high court judges (*desembargadores*) (1620–1800).

On the basis of individual case studies, Camarinhas was also able to confirm that there were true dynasties of jurists: sons of jurists who chose their father's career or daughters who married lawyers from other families (151). In some of these cases, there were generations in which almost all the male children followed the *carreira de letras* while a high percentage of the daughters married *letrados* (marked as grey squares in Figure 6).

Camarinhas used narrative sources to investigate the symbolic capital of the group, exploring their participation in the liturgies of power: in solemn sessions of the opening of *cortes*, at funerals and royal marriages, and in processions (chapter 3.2.1). He also traced their participation in distinguished groups of elite sociability, for example in military orders, as *familiares* of the Inquisition, in elite confraternities (incl. *misericórdias*), and as members of the *moradias* (»houses«) of the Casa

Real (chapter 3.2.2). The evidence confirms their high social reputation, further reinforced by their public participation in prestige ceremonies, which clearly benefitted their career progression as magistrates. On the other hand, whilst factors such as symbolic indignity – blood »infected« by Jewish or Muslim ancestry (*sangue infecto*) or descent from a family of *mecânicos* – supposedly excluded the candidate from the royal magistracy, in practice (as mentioned above), this principle was often mitigated by royal grace, especially regarding sons of *mecânica* families. At most, this social »blemish« would slow down a candidate's promotion or result in initial postings overseas (such as in India, Cape Verde and São Tomé), which were less popular because of the dangers involved and thus avoided by those *letrados* benefitting from higher symbolic capital.

In the chapter on the magistrates' income and wealth (chapter 3.3), Camarinhas relied on yet another type of source: wills and inventories available – if only for a small number of the individuals concerned – in the Portuguese National Archives of Torre do Tombo or in inquisitorial proceedings. Camarinhas' research makes clear that the magistrates' major source of income was leasing out smaller offices (*serventias*) granted to them by the Crown in reward for services. Figure 7 shows the respective proportions of the different kinds of offices involved.

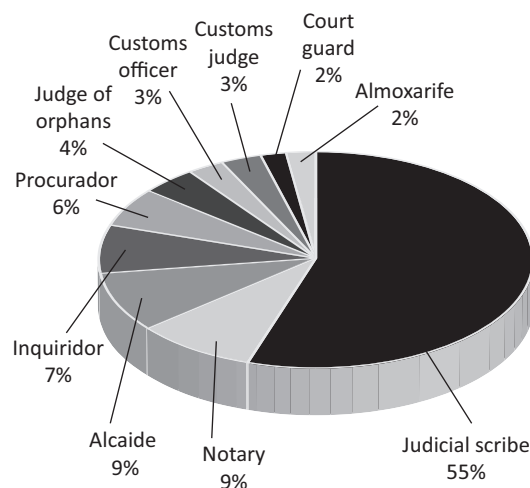


Figure 7: Small offices (*serventias*) granted to magistrates by the Crown (1620–1800).

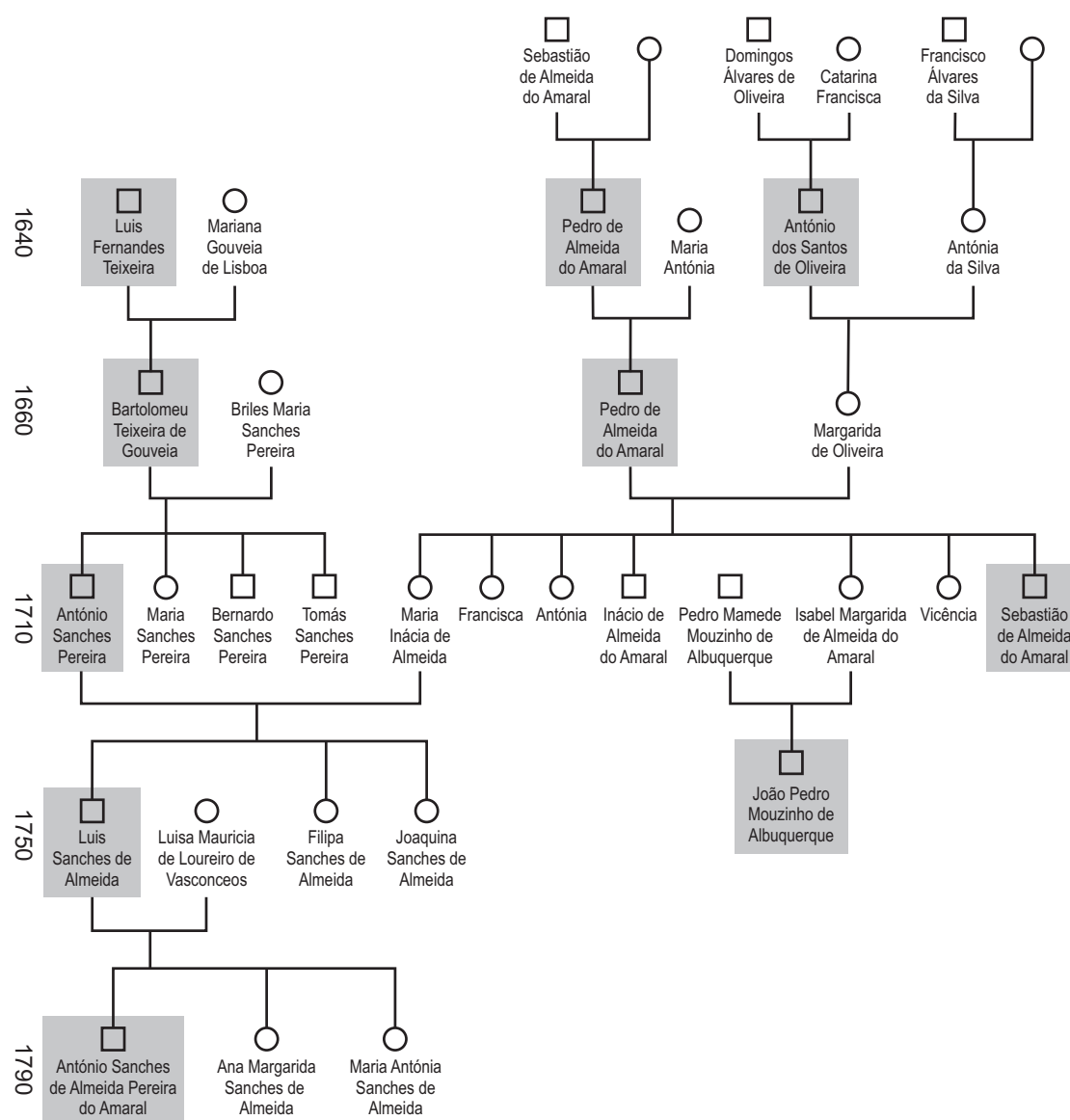


Figure 6: Genealogical tree of the family Sanches Pereira / Almeida do Amaral (1640–1790).
Source: Camarinhas (2010a) 155.

The study of the *letrados*' career profiles (chapter 4) is, in my opinion, the most important part of the book. Here, the author departs from the more usual questions of the social history of a profession to address the »internal model« of the career as an autonomous and self-referential device of recruit-

ment, of social, bureaucratic and spatial mobility and mental modelling of individuals, according to inner logics of organization and specific dynamics of the circulation of the personnel.

The magistrates were recruited from among the graduates of either faculty, *Leis* or *Canones*.⁴⁴ Most

44 According to FONSECA (1997) 537–539, between 1577 and 1772 the enrolments in *Canones* reached 72% of

the total university admissions; those of *Leis* 15%. The difference decreased when it came to graduates because

Leis was a less selective course with a lower drop-out rate (31%, against 44% of *canonistas*).

came from *Canones*, but the Crown tried to promote the candidacy of *legistas*, whose training in secular law might be considered more suitable for royal service. Of all candidates undergoing the examination for admission to the magistracy, 70% had a bachelor's degree, 4% were *doutores*, and only 3% were graduates (*licenciados*) (243). After obtaining the diploma, candidates were still required to serve two years as assistants (*tirocínios*) in court, usually in their city of origin, before being permitted to attempt the *leitura de bacharéis*. These two years of practice could, however, be replaced by two years as a substitute lecturer at the university (516, 245). The *leitura* took place in the *Desembargo do Paço* and comprised an inquiry into the candidate's »purity of blood«, his family's status and his moral conduct (251), along with »reading« a point of law drawn randomly before the *desembargadores*. This examination of knowledge symbolically competed with the university and was thus a source of conflict between the two institutions (chapter 4.1.4). Over the period under consideration (1620–1800), there were 5853 *leituras* (see Figure 8 for their distribution across the period).

As Verney has pointed out, the examination was not very strict (see Figure 9). After all phases of the examination, including second attempts, less than 2% of candidates failed. Despite this, the number of candidates who passed but did not take up a post as royal magistrate was high. Of a total of 5580 successful candidates between 1620 and 1800, 28% (just over 1500 individuals) were never appointed to any office of royal justice. From what can be inferred, they either entered the religious life, went to the bar or into other branches of administration, or became teachers of pre-university education.

As Figure 10 shows, the levels of the first posts of those who did follow a judicial career (chapter 4.2) varied significantly.

After the first appointment, magistrates progressed in their career through different types of posts, as represented in Figure 11.

A typical career began with an appointment to a lowest type of entry-level judicature (*lugar de primeira entrância*). Some *letrados* remained at this level in their next posting, others were promoted to positions on the second entry level (*lugares de segunda entrância*), which corresponded to positions in towns that were heading a judicial district (*comarca*). The proportion of *letrados* who remained in positions at these two lower levels was very high. Those who reached the high courts moved through

the institutions according to a specific hierarchy among them, culminating in the *Casa da Suplicação* (as *agravistas*, the paramount post) and in the *Desembargo do Paço*.

Certain appointments functioned as career »shortcuts« or »accelerators«. One of these was serving in overseas magistracies, which facilitated promotion to high courts (usually, the *Relação do Porto-Casa do Cível*). Many appointments to Brazil or to the Atlantic archipelagos were accompanied by the promise of a promotion to this *Relação*. This has probably been an important factor in getting nominees to accept these positions in the distant overseas territories, where they were likely to encounter problems of the enforcement of law and of judicial authority and were exposed to the dangers of travel and diseases. Another shortcut was royal favour, which enabled a magistrate to overcome statutory obstacles or permitted fast promotions – for example as compensation for longer pauses or in reward of services to the Crown, such as service in newly created posts.

The exercise of these posts was subject to periodic inspections called *residências* or *sindicâncias*, which investigated the professional and personal behaviour of the *letrados* and were carried out by a magistrate of a higher rank. For the period between 1690 and 1742, records of 4610 *residências* are extant. Probably as a result of the lawyers' mutual solidarity, only 1.1% of cases led to a conviction (328 ff.). However, the mere existence of the procedure represented a *caveat*, possibly reducing the likelihood of magistrates breaking rules in either their professional or private lives.

The hierarchy of *lugares* constituted the *cursus honorum* of a judicial career, a set progression according to certain rules which could, however, be circumvented by »shortcuts« and »accelerators« (though these themselves followed certain rules). This created not only a hierarchy of positions and thus of their holders, however, but also a shared structure and shared practices.

Camarinhas' prosopographical method enabled him to identify five different models of career progression (chapter 4.4), which he labelled »peripheral«, »intermediate«, »overseas«, »complete« or »vertical«, and finally »superior« careers, respectively. Figure 12 illustrates the percentages of individuals from his sample who followed the different models.

In a »peripheral« career, a magistrate circulated only between posts at the county level. These

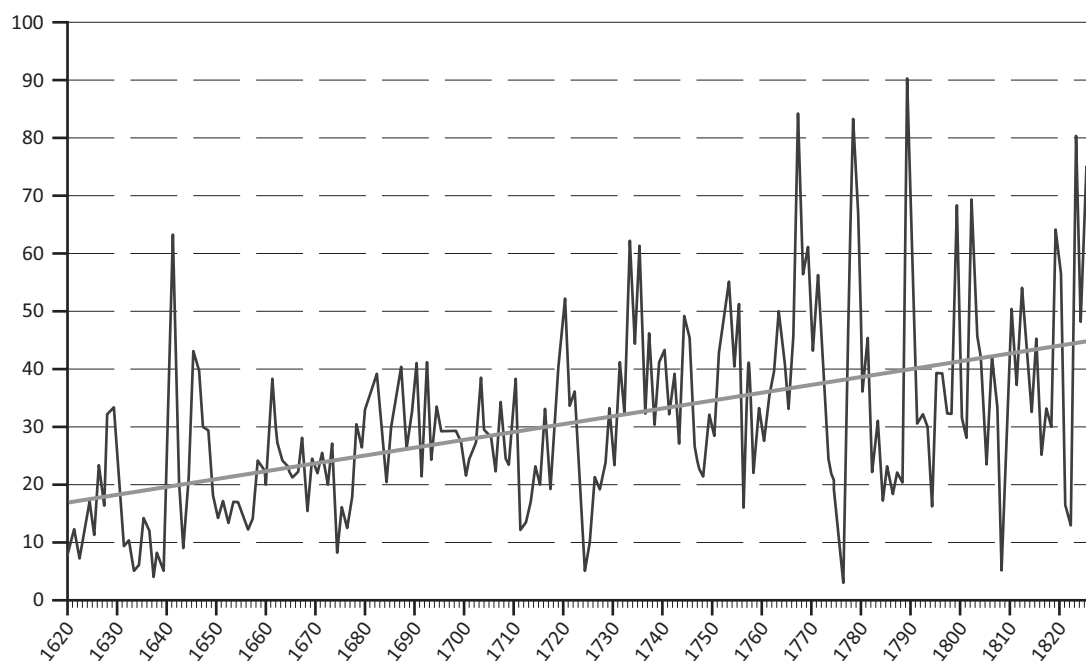


Figure 8: Number of *leituras de bacharéis* by year (1620–1827).
Source: Camarinhas (2010a) 256.

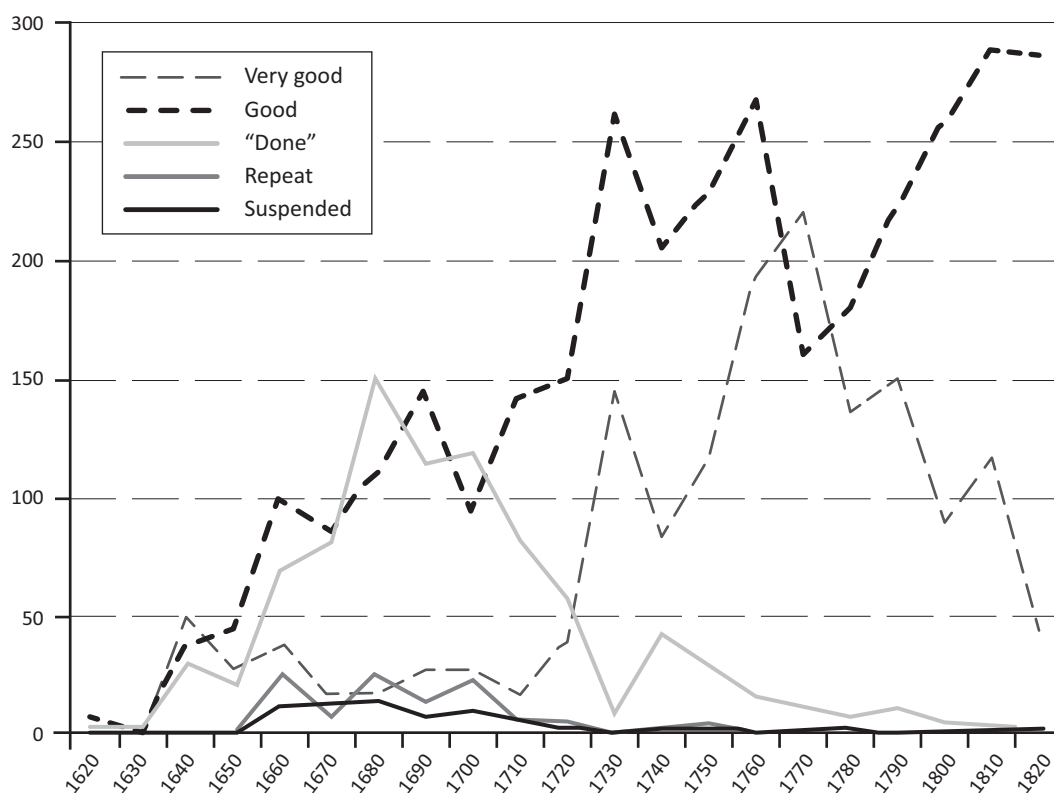


Figure 9: Outcome of the *leituras de bacharéis* by year (1620–1820).
Source: Camarinhas (2010a) 259.

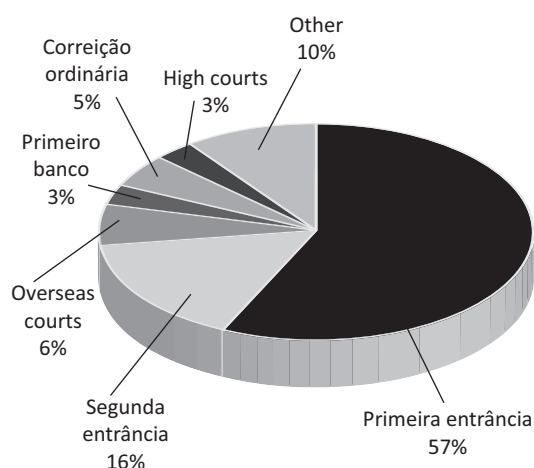


Figure 10: Distribution of categories of posts (*lugares*) for magistrates' first appointments (1620–1800).
Lugares de primeira entrância: lowest entry level positions;
lugares de segunda entrância: second entry level positions;
lugares de correição ordinária: positions in head towns of comarcas;
lugares de primeiro banco: positions in important towns, i.e., whose representatives sat on the front bench in the *cortes*.
Source: Camarinhas (2010a) 267.

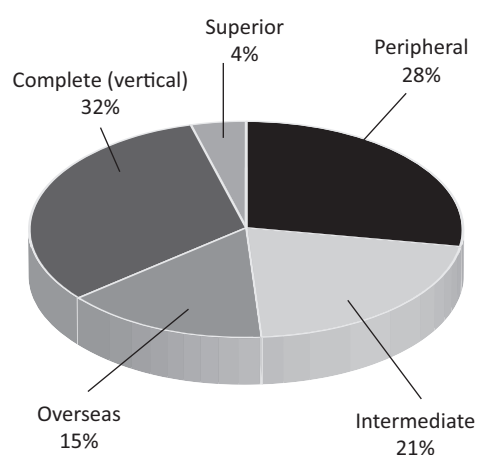


Figure 12: Distribution of models of career progression (1620–1800) identified by Camarinhas (2010a) 277.

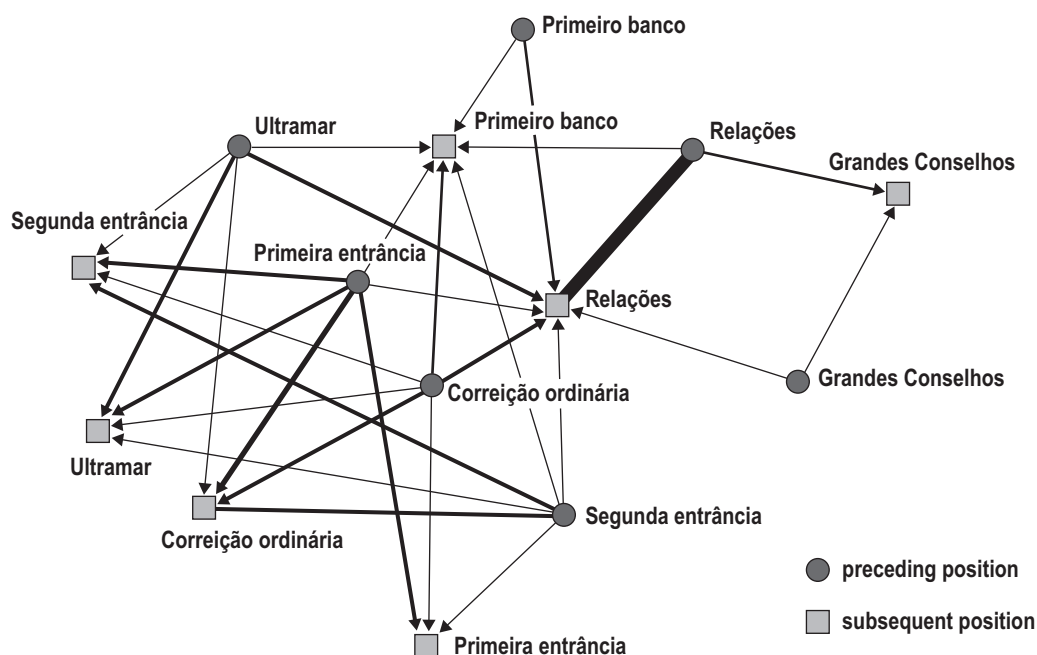


Figure 11: Network of commonly linked steps of magistrates' career progression (1620–1800).
Ultramar: overseas territories; *Relações*: appeal courts, the main kind of high court.
Source: Camarinhas (2010a) 270.

careers were relatively short (on average up to nine years), and were made up of one to four appointments as learned county judges (*juízes de fora*).⁴⁵

An »intermediate« career meant that magistrates reached positions at the slightly higher levels of district-level royal administration, above all as *juízes de fora* of important towns, as *corregedores*, *provedores* or *ouvidores* (other possible posts included military auditor or, later, superintendent). They had longer careers (on average about twenty years), during which they held three to five appointments (see Figure 13). Sometimes an individual's successive appointments stayed within one region (289), though not always that of the magistrate's origin.

If after holding various district-level posts a magistrate was nominated to the high courts (*Relações*, *Desembargo do Paço* ou *Conselhos*), Camarinhas speaks of a »complete« (or »vertical«) career.

He chose to treat careers that included one or more temporary overseas posting(s) as a distinct type (chapter 4.4.2) because serving in such posts functioned as a career »accelerator«. As with postings in mainland Portugal, the quality of a magistrate's performance overseas was assessed by a *residência* at the end of the office holder's term. After the overseas post, many magistrates returned to the Portuguese kingdom to an appointment in the *Relações* (courts of appeal). Camarinhas found that »overseas« careers had their own internal geometry (see Figure 14). Particular stations functioned as nodes of convergence and distribution, as can be seen in the graph below. Bahia and Rio de Janeiro served as such »distribution centres« for *lugares* in Brazil and Angola; whereas the Atlantic archipelagos of the Azores and Madeira played this role for magistrates born on the islands.

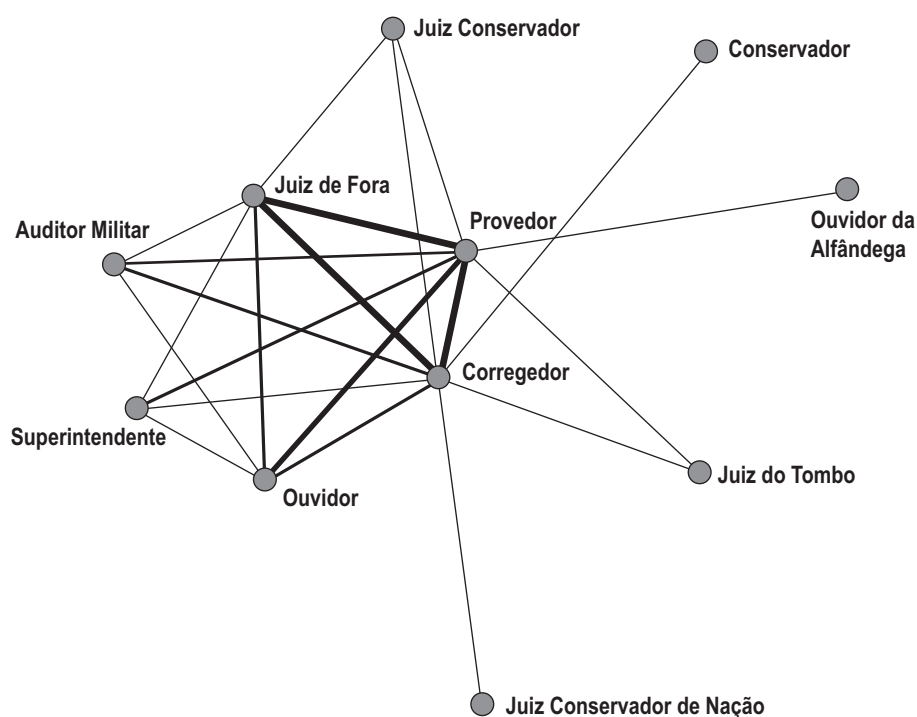


Figure 13: Network of positions of an »intermediate« career.
Source: Camarinhas (2010a) 284.

45 Or as *letrados* at local criminal courts or as *juizes dos órfãos*.

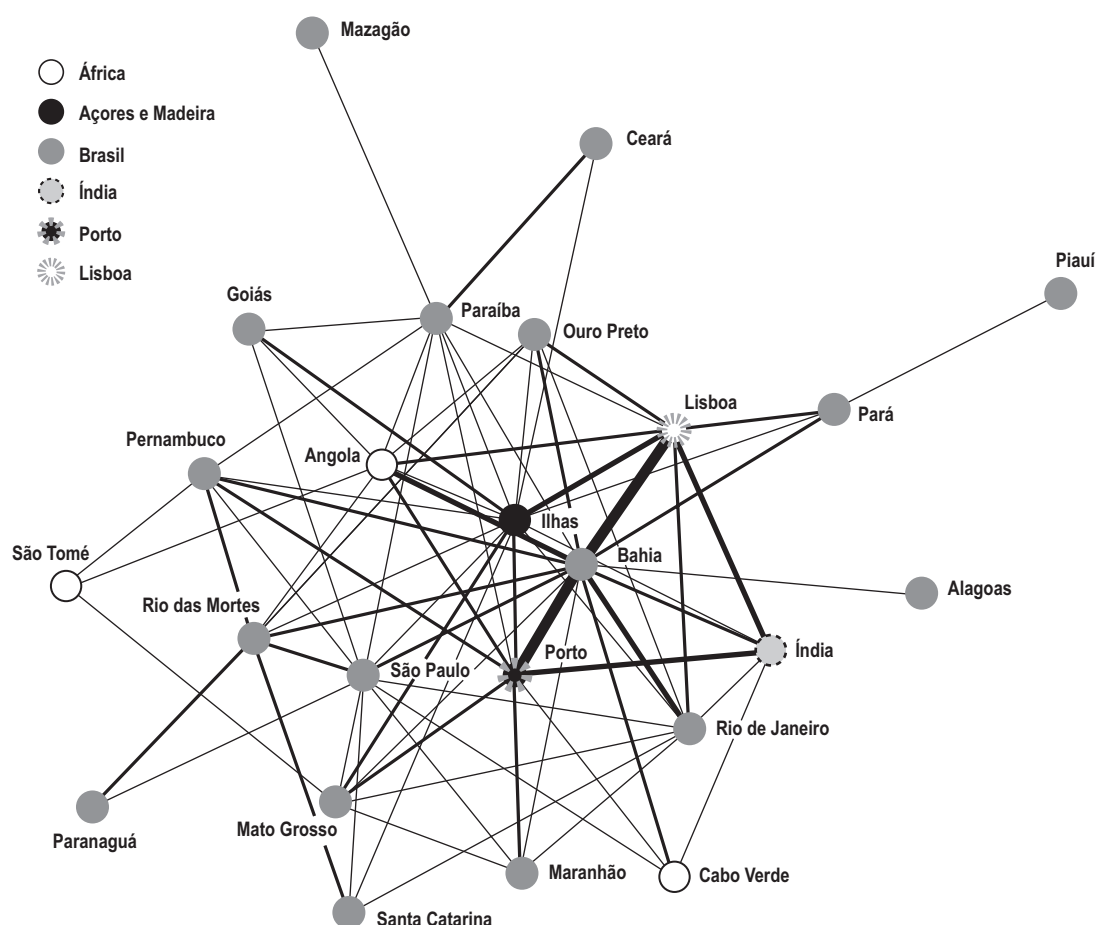


Figure 14: Network of overseas positions.
Source: Camarinhas (2010a) 299.

Those appointed to overseas positions were predominantly born in mainland Portugal (85%). Although there are some examples of magistrates born in *ultramar* and holding colonial posts, there were no closed »overseas bureaucracies« (with the probable exception of the Azores). However, the group of magistrates who had what Camarinhas labelled an »overseas« career may well have contributed to the formation of a colonial elite. Although the intention of the candidates who took overseas posts was presumably an eventual appointment in a metropolitan *Relação*, more than half of those who left their first overseas position (some 62%) did not return to the kingdom but took further posts in overseas territories, some at *Relações* (16%) but most in local magistracies (44%). Figure 15 shows that 14% of those taking

up posts as *desembargadores* did so after holding an overseas appointment.

Camarinhas called the highest-profile career model the »superior« career. Magistrates who fall into this category profile were professors (mainly in *Leis* but also in *Canones*) and were members of the royal colleges of S. Pedro and S. Paulo. They were appointed to the *Casa da Suplicação* or *Desembargo do Paço* an average of nine to twelve years after they were gained a chair or joined a royal college. They served in these courts only whilst on vacation from their academic functions. Despite their academic merits, however, until 1793 these candidates also had to take an exam in the *Desembargo do Paço*. These senatorial appointments were sought after not only due to the higher salaries offered, but also as an alternative career step by

candidates who had failed to rise to a higher-level university chair.

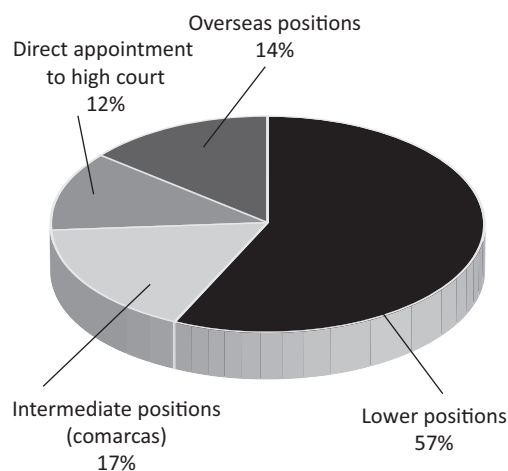


Figure 15: Distribution of categories of posts immediately preceding appointment as a high court judge (1620–1800). Source: Camarinhas (2010a) 289.

Prosopographical data also provide insights into the group's income, which consisted of a salary and emoluments (see Figure 16). The incomes of overseas magistrates were higher at each level. The members of the great palatine councils were the best paid, with the president of the *Desembargo do Paço* receiving 560 000 reis annually (at the end of the period studied; in the second half of the 18th century, his pay reached 3 200 000 reis).⁴⁶

The perhaps most innovative aspect of Nuno Camarinhas' work is the analysis of patterns of career progression. His study, focused on the objective organisational logics of a bureaucratic career – something that was new at the time, though it had overtones of the ancient Roman *cursus honorum*. It reveals a regulated sequence of positions with established processes of passage from one to another, that is, proceeding from dealing with minor cases to major ones, from more elementary to more sophisticated degrees, from mod-

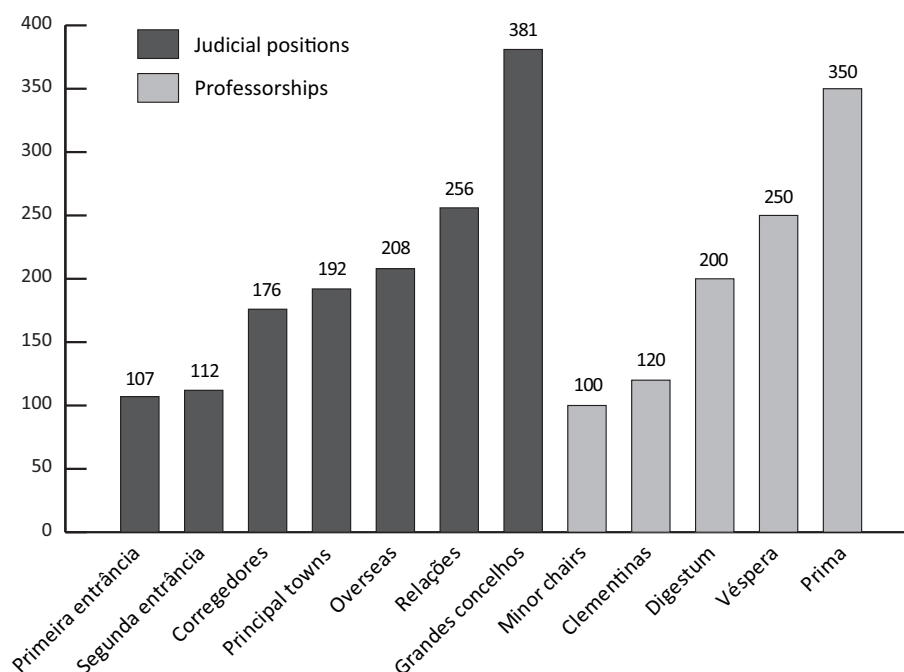


Figure 16: Average revenues of royal magistrates and university professors per year (by type of post, in thousands of reis). Source: Camarinhas (2010a) 314, 316.

⁴⁶ Approximately 1400 *ducados*, in a European standard. On university salaries, see FONSECA (1992) 519 ff.

est to more substantial payments, from territorial peripheries to the centre.

These structures shaping the careers of royal magistrates have consequences on several levels. They correspond to a hierarchy of legal matters and, moreover, of the political-administrative relevance of positions; a geographical hierarchy, by defining careers as more or less peripheral in relation to the centre; a hierarchy of the magistrates themselves, who served on different levels of judicial administration; a hierarchy of legal knowledge, classifying it into degrees of education that were more or less important in terms of power. And, finally, it shows a state organized as a pyramid, with a single vertical axis that defines the political importance of situations of life, focusing the territory on a centre that spreads knowledge and which generates revenue to the agents, according to the rule: the more important, the closer to the centre.

Recently, Nuno Camarinhas published an edition of a truly monumental source for the prosopography of jurists, the *Memorial de Ministros*.⁴⁷ This set of nine codices of c. 400 pages each contains a huge collection of biographies of »ministers«, and was intended to cover all the judges who had served the Portuguese Crown from its foundation to the time of writing. It was compiled over the course of the 18th century by two Benedictine monks, Frei Luís de São Bento and Frei António Soares. São Bento started the *Memorial*, working on it between 1723 and 1767, and Soares completed it at the beginning of the 19th century. The *Memorial* is the result of decades of research in registries and archives and of the collection of information through an extensive network of correspondents (magistrates, notaries, members of the military, judicial clerks and scholars). In addition, the compilers did extensive research in the historical, biographical, bibliographical, genealogical and chorographical literature in their monastery's rich library. The *Memorial* is composed of individual entries on each magistrate, including information on his name, birthplace, family, and a short biography, including academic training, exams in the *Desembargo do Paço*, career progression, marriage and children, ending with an overall evalua-

tion of the magistrate, generally positive. It lists a total of 6684 judges from the Restoration of Independence in 1640 to the beginning of the 19th century.

At the same time, Frei Luís de São Bento worked on an atlas of posts held by these learned magistrates (which he completed in 1756 and revised in 1760), in which he lists the corresponding jurisdictions by province and *comarca*, with a succinct description of each office (though there are some gaps).

5 The world of the elite magistrates (*desembargadores*)

The *Dicionário dos desembargadores* (1640–1834),⁴⁸ edited by José Subtil, contains biographical data from 1912 judges from the high courts of both the Portuguese kingdom and the overseas territories (*Desembargo do Paço*, *Casa da Suplicação*, *Casa do Cível*, and the *Relações* of Goa, Baía and Rio de Janeiro). The great majority of the judges included (1763) are from the period of the corporate monarchy, and only 149 from the liberal period. Of course, the *Dicionário* includes only a part of the *desembargadores* and of those bachelors who »read« in the *Desembargo do Paço* before applying for suitable *lugares de letras* afterwards.

Each entry includes the name used by the judge, his academic qualifications, date of birth, geographical origin, the names and origins of his parents and grandparents, the offices he held, royal favours he received, and other observations. The data were collected from archival sources (the records of the royal chancellery, the *Registo Geral das Mercês*, and the records of the *leituras de bacharéis*) and the *Memorial de Ministros*.

Apart from enabling us to study the social and geographical origins of the high court judges and their careers, the data also reveal the standing and role of *desembargadores* among the *letrados* as a whole and even in relation to other, political positions within royal government and administration. As the judges listed in the dictionary include those who pursued a career in the overseas territories, it also makes it possible to study

47 CAMARINHAS (2017).

48 SUBTIL (2010a).

the role of *ultramar* in the administration of the realm.

Using these data and others from previous studies on the *letrados*, Nuno Camarinhas in his introductory article to the *Dicionário* provides an interesting statistical analysis of the personnel at the highest level of the Portuguese empire's justice.⁴⁹ Regarding the *desembargadores*' social background, he found the elitism of the *letrados* that his previous studies had suggested, confirmed. This was particularly true regarding the frequency of high court judges coming from families from the social elites (60% of those of identifiable origin): 5% were the sons of wealthy merchants, 19% of lawyers, and 24% of military officers. Camarinhas also confirms the very low number of *desembargadores* with a *mecânico* origin (1%). This is perhaps unsurprising given the exclusions imposed on this marginalized group in entering university and, later, in applying to take the *leitura de bacharéis* (17). Noticeable is the statistical significance of the sons of jurists in the appointments for *lugares de letras* of higher distinction (judges in *terras de primeiro banco*⁵⁰), *corregedores*, *ouvidores*, *provedores* and *desembargadores*. In the case of the latter, however, the social elitism is somewhat tempered by the importance of academic merit for obtaining the position.

As for the *desembargadores*' regional origins, they also clearly concentrated in the main urban centres – Lisbon, Porto and Coimbra. Nevertheless, a significant number of high court judges came from the overseas territories, most notably Brazil (5%, but only 1.5% from the Atlantic Islands).

Camarinhas' conclusions about the career matrix that led to the high courts are particularly interesting. Serving as a *desembargador* was a distinction obtained late in a judge's career, usually his third or fourth post, because magistrates were supposed to have previously served at a court in a minor town, then in a *comarca*'s head town and subsequently in a *corregedoria*, *provedoria* or *ouvidoria*. Between 1640 and 1820, achieving an appointment to a position as *desembargador* occurred even later as the average age for appointees rose to 50 (21). On the other hand, the opening of more overseas posts as *juízes de fora*, learned *ouvidores*

and *desembargadores* gave a new impetus to these careers.

Figure 17 illustrates the relations between different *lugares de letras* as steps of a judicial career towards appointment as a high court judge. Types of positions are represented by points. Their respective proximity or distance and the thickness of the connecting line indicate how often they were consecutive steps in the careers of the *desembargadores* studied. The figure clearly shows that the positions most closely related to that of *desembargador* were *juiz de fora*, *corregedor* and *ouvidor*, although there were also other posts from which judges progressed to the high courts, if less frequently. It also confirms that an overseas career *de letras* did not necessarily lead to overseas *Relações*, but could also result in promotion to metropolitan posts.

Applying the same method of representation to the relation between positions in the metropolis and those overseas, Figures 18 and 19 illustrate the geographical paths along which the magistrates circulated.

In Figure 18, we can see very clearly how the *Relação do Porto* was the central hub of the constellation of overseas positions. It also shows that the Atlantic archipelagos, India, and Brazil constituted entirely separate career spaces. There was no circulation of *letrados* between the different overseas territories. As Figure 19 shows, the key centre in Brazil was the *Relação* of Baía. Positions in India were very unpopular because of the length and risks of voyage and thus often staffed with candidates with little experience and or otherwise less distinguished careers.

Figure 20 illustrates the place of *Relações* in the system of the judicial high councils of the monarchy. It shows the centrality of the high courts of justice amidst the other councils of state (*Conselhos de Graça, de Governo* and *da Fazenda*; however, the War Council does not appear) and, therefore, the centrality of »justice« in the system of ruling the corporate monarchy. This fact further reinforced the judges' self-image – developed at the university and further reinforced by the exclusive character of the group – of an elite destined for the exercise of power on the basis of its social excellence and of its

49 CAMARINHAS (2010b).

50 Towns whose procurators sat on the front bench in the sessions of the *cortes*.

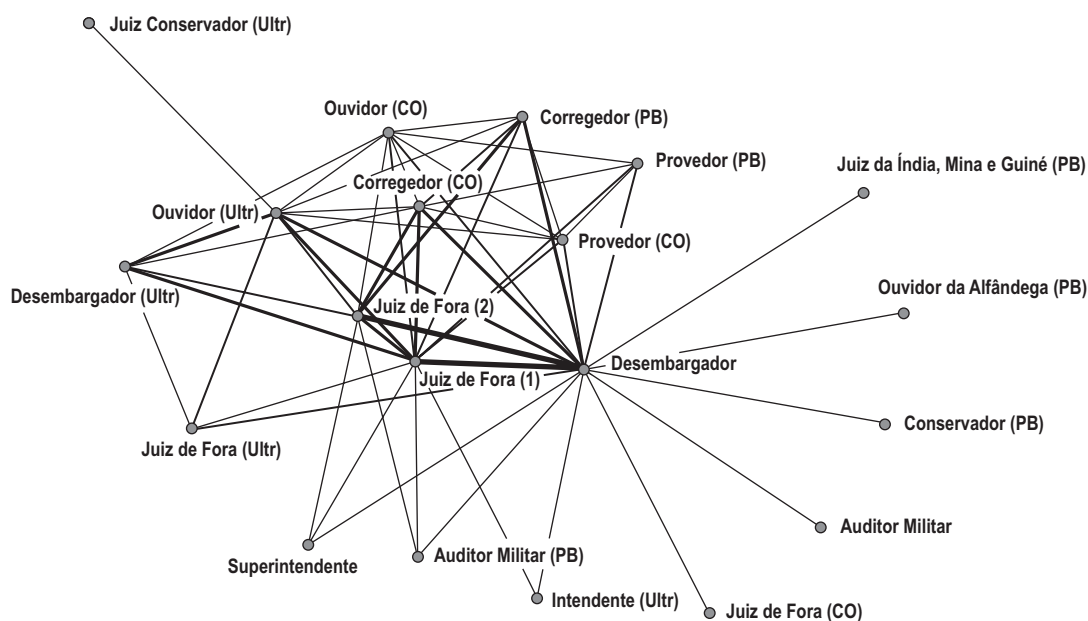


Figure 17: Career paths preceding appointment as *desembargador*.
Juiz de Fora (1) and (2): county judges in *lugares de primeira* and *segunda entrância*, respectively;
 CO = *correição ordinária*; PB = *primeiro banco*; Ultr = *ultramamar*. Source: Camarinhas (2010b) 24.

academic formation that had provided them with a singular ability to assure a just order in the Portuguese monarchy.

In the conclusion of his survey of the *desembargadores* in the liberal period, José Subtil notes the continuity of this elitist matrix of the senatorial group.⁵¹ The fact that their distinction combined social excellence with academic authority caused the group to successfully weather the turbulence of the Enlightenment and then of Liberalism. In fact, this elite was even able to consolidate its power during these periods. As the emerging secularism began to erode the prestige of theologians, they came to be regarded as the holders of the most valid knowledge on government and the temporal order more generally. It was from within this group that the Pombaline and post-Pombaline political personnel was recruited. Although the magistrates' public image was often negative and they were the target of the most radical reformers' criticism, they continued to be heavily represented

also in the ruling circles of the new regime after the revolution of 1820.

From the point of view of their family origin, there is a marked endogamy of the group. Whereas between 1750 and 1826, 42% of *desembargadores* held a doctoral degree, of the 149 appointed between 1820 and 1834 (at the average age of 52) (45), only 12% entered on the basis of such academic merits (47). Descent from a family linked to the legal professions continued to represent a strong asset: nearly half of the judges came from families of lawyers. On the other hand, only 1% descended from the »titular« nobility (that is, were born noble), although 17% were eventually raised to noble status (47). Camarinhas' edition of the *Dicionário* is an invaluable resource for prosopographical studies, both due to the amount of information gathered and to the uniformity of the criteria applied during its collection.

51 SUBTIL (2010b) 55.

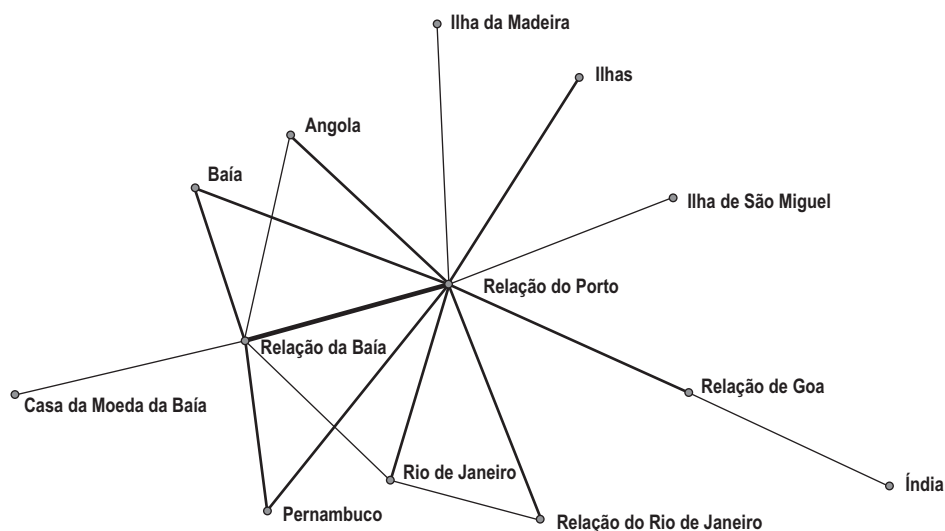


Figure 18: Network of more frequent overseas career paths including the *Relação* of Porto.
Source: Camarinhas (2010b) 32.



Figure 19: More detailed representation of the network of more frequent overseas career paths
(below the level of the *Relação* of Porto).
Source: Camarinhas (2010b) 33.



Figure 20: Network of the main posts of *desembargadores* in the polysynodal system of the monarchy.
Source: Camarinhas (2010b) 35.

6 The database *Storia Iurisprudentiae Lusitaniae Antiquae*

The *Storia Iurisprudentiae Lusitaniae Antiquae* (S.I.L.A.) database was assembled between the late 1980s and c. 2001. It focuses on authors of doctrinal legal works writing between the 16th century and the first quarter of the 19th century, who either were Portuguese or with significant connection to the Portuguese academic environment.⁵² Authors were included irrespective of whether their works were printed or not, are lost or still extant. Even if their authorship could not be ascertained, manuscript works of an academic nature on juridical matters (such as notes and texts of *lições*, *relecciones*, *repetitiones*), commentaries, short treatises, diction-

aries, collections of *decisiones* or *allegaciones*) were included.

The researchers analysed these jurists' »doctrinal production«, which they defined as original texts of a legal nature in manuscript or print which were not simply isolated procedural pieces. However, certain court documents, such as *alegações*, opinions (consultations) or decisions were also entered if they appeared as autonomous works (in either manuscript or printed form) or had been included in collections. In order to identify an author's type of literary activity, his other works were also registered, even if these were on non-legal themes.

The collection of information began with the *Biblioteca Lusitana* of Diogo Barbosa Machado.⁵³ Starting from those authors listed as jurists in the

52 The data collection and initial treatment was done between 1997 and 2005 by a team of undergraduate and master's students from the Department of History of the Faculdade de Ciências Sociais e Humanas, Universidade Nova de Lisboa, under my

direction. The following collaborated in the collection and processing of data: André Belo, Carla Araújo, Catarina Madeira Santos, Joana Estorninho, José Miguel Sardica, Luís Nuno Rodrigues, Margarida Melo, Nuno Camarinhas, Paulo Girão, Paulo

Matos, Rui Tavares and Sandra Monteiro. The first revision of the data was done by Joana Estorninho and Paulo Matos. The project was supported by INIC/FCT and the *Comissão dos Descobrimentos*.

53 BARBOSA MACHADO (1741–1759).

Biblioteca's index, further writers were then added according to the criteria of the database. The information was subsequently augmented using other sources. The database is a rich source of information on manuscript texts (with or without a named author) dealing with legal doctrine. In general, they are manuscripts of an academic nature that exist by the hundreds in Portuguese libraries, mostly in the University Library of Coimbra, but also in the National Library of Lisbon, in the library of the University of Evora (a former Jesuit university) and in the Biblioteca da Ajuda (the former royal library).⁵⁴ Other works of a bibliographical and historical nature were also consulted.

The biographical information was supplemented by the systematic consultation of the books of the royal chancelleries and military orders and the records of the *habilitações* of the Inquisition (all in the National Archives Torre do Tombo), as well as the academic records of professors and students kept in the archives of the University of Coimbra. In the case of royal chancelleries, the material collected still needs to be revised due to problems created by homonymy.

Figure 21 shows the distribution of the c. 1400 authors currently registered in the database over the centuries covered (according to year of birth).

Altogether, the writings registered in the database constitute the bulk of the doctrinal production of Portuguese jurists from the 16th to the early 19th centuries. Of the total of 8235 texts recorded, approximately a quarter are anonymous or of uncertain authorship. The texts deal with mostly legal subjects (c. 73% of the total), although jurists also wrote on some neighbouring themes, such as philosophy, historical geography, theology etc.

Figure 22 shows the distribution of the 6620 juridical works across the major topics of law,

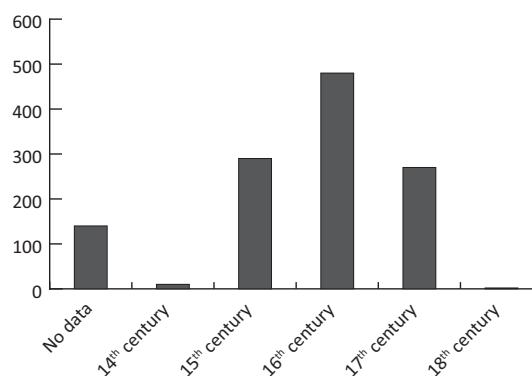


Figure 21: Distribution of authors in the S.I.L.A. database, by century of birth.

according to the works' titles. The themes of canon law and procedural law (*in utroque iure*) predominate, while contracts, family and succession law, as well as what we would today call the »general part« of obligations law, stand out among the themes of substantive secular law. It should be noted that these values are approximate because it is not always certain that the title of the work corresponds to the subjects treated. In fact, most of the titles refer to texts of *ius commune* and, as is well known, the authors often dealt, in relation to a text, with matters that did not necessarily match the epigraph of the source mentioned. Furthermore, the classifications of the various branches of law that we use today were not those adopted three hundred years ago and they often seem quite arbitrary.⁵⁵ Each of these broader categories covers a variety of specific topics. »General issues«, for example, include themes such as justice and law, sources of law, interpretation, and rules of law. In canon law, subjects that stood out included the status of the clergy, the regimes of the bishops and other dignitaries, benefices (*præbendæ*), ecclesias-

54 Information from the following sources has already been included: the manuscript catalogues of the *Secção de Reservados* of the Biblioteca Nacional de Lisboa, the *Catálogos dos manuscritos da Universidade de Coimbra* (Coimbra, several volumes), the same library's *Catálogo das miscelâneas* (Coimbra, several volumes, 1967–1984), the *Catálogo dos manuscritos da Bibliotheca Publica Eborensis* (ed. Joaquim Heliodoro da Cunha Rivara, Lisboa, Imprensa Nacional,

1850–1871), Nicolás Antonio's *Biblioteca Hispana nova (sive Hispanorum scriptorum qui ab anno 1500 ad 1584 floruerunt notitia)* (Madrid, 1783–1788) and the catalogues of the Biblioteca da Ajuda. The following possibly relevant bodies of documentation have not yet been examined: the Biblioteca da Academia das Ciências (*Catálogo de manuscritos: série vermelha*, Publicações do II Centenário da Academia das Ciências de Lisboa, 1978, 2 vols. (<http://www.acad-ciencias.pt/acade>

<http://www.acad-ciencias.pt/acade> mia/biblioteca-fundos-documentais), *Catálogo de Manuscritos. Série Azul* (http://www.acad-ciencias.pt/document-uploads/8737551_catalogo-ma.pdf), the Biblioteca Municipal do Porto, the Biblioteca de Mafra, the Biblioteca Municipal de Braga and the Biblioteca Nacional do Rio de Janeiro.

55 See HESPANHA (2015), above all chapter 1.1.8.

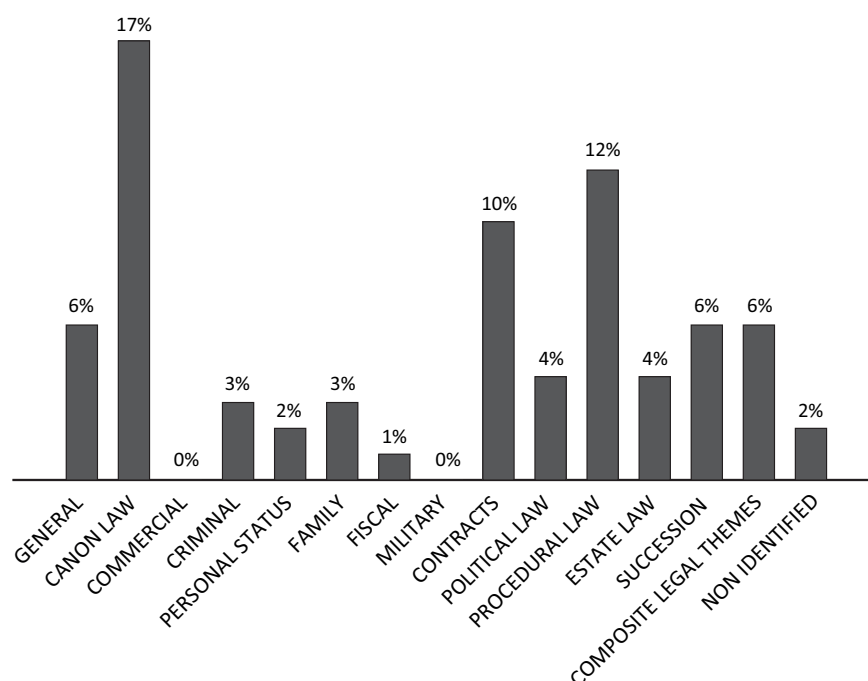


Figure 22: Distribution of texts in the S.I.L.A. database according to legal topic, by title (rounded figures).

tical offices and their election, and ecclesiastical jurisdictions at the various levels. Themes on procedural law include matters such as court competence, judges' powers, evidence law, procedural incidents and exceptions, sentencing and *res iudicata*, appeals. In contract law, the general questions discussed concerned covenants and contracts, terms of contract, »vices of the will« (especially coercion), guarantees (particularly pledges), payment, and nullity (*restitutiones in integrum*). Among the particular types of contracts discussed were sale, exchange, lease of things and services, loan and usury. In inheritance law, questions regarding wills, legacies and trusts, the appointment and status of heirs, succession *ab intestato*, substitutions and *morgados* (entailed estates) were frequently discussed. In family law, the issues occurring most often in the texts were betrothal, marriage and parentage. Regarding property rights, issues of ownership and emphyteusis were priorities. Of the questions relating to the quality of persons, the most popular themes concerned the status of women and slaves. In the law we call »political« (pertaining to the city), the questions of royal succession and of seigneurial domains and titles stand out. In criminal matters, many texts

discussed religious crimes, such as heresy, simony and adultery.

The data concerning authors are diverse. In the database – currently including 22 193 records – the proportion of various types of data is as shown in Figure 23.

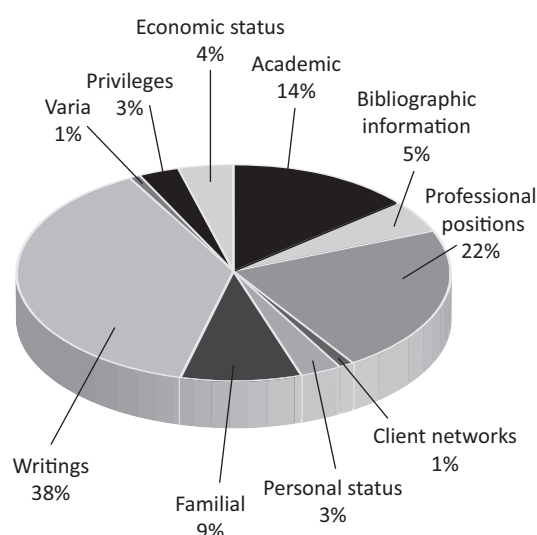


Figure 23: Distribution of types of available records on the authors in the S.I.L.A. database.

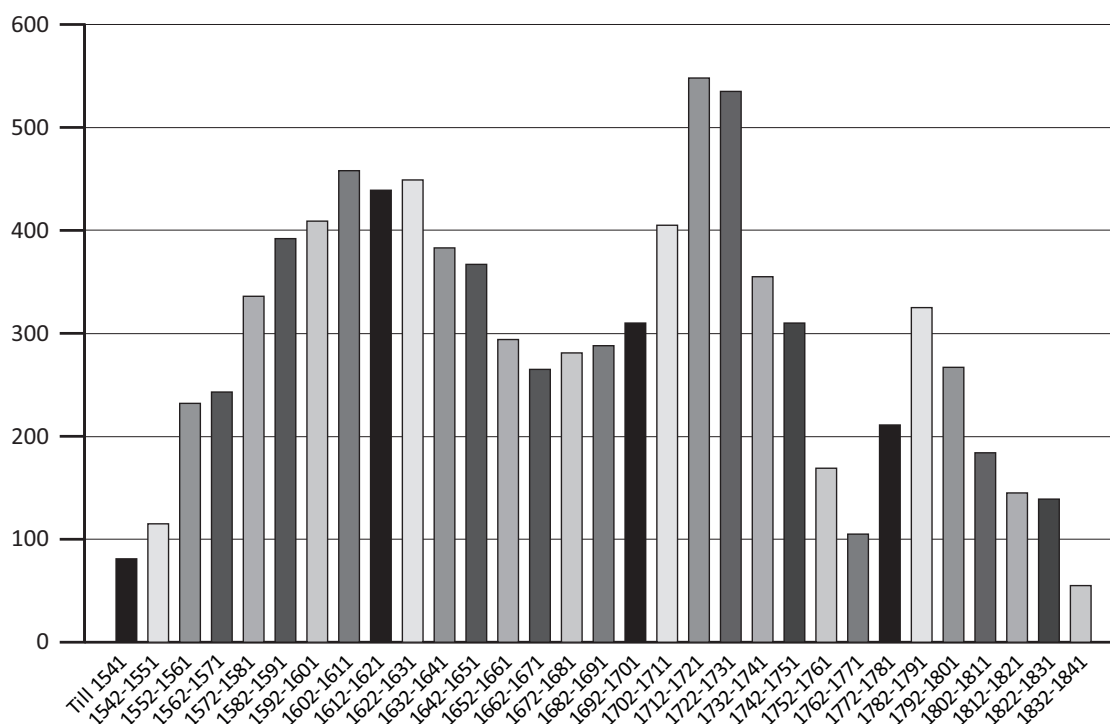


Figure 24: Distribution of datable information on the authors in the *S.I.L.A.* database, by decade.

The information that can be dated is distributed chronologically as follows (Figure 24).

As we see, the great mass of the information relates to the period between the last quarter of the 16th century and the first half of the 18th century. Before and after these dates, the smallest number of occurrences points to a lower integrity (or completeness) of the records collected in the database.

At the moment, the *S.I.L.A.* database is being prepared to be made publicly available. This includes correction and verification processes, thematic indexing and the creation of a user-friendly query platform. At this stage, the preliminary database can already be used, but with the proviso that it is a work still in progress. Nevertheless, the collected data already renders productive results. My recent article on legal authors and legal writings in Coimbra's academy in the transition from 16th to 17th centuries is essentially based on the retrieval and exploration of data from *S.I.L.A.*⁵⁶

7 Conclusion

The prosopographical works described here have produced an immense amount of data, probably more than 50 000 bits of information. Almost all of this documentation, even if initially published in printed form, also exists in digital format. What is missing so far is the integration of these databases in order to allow them to be crossed and combined.

Furthermore, some – if not all – of the original databases can be extended. This is particularly true of those relating to students, where the study done by Joana Estorninho could be replicated for other chronological periods. *S.I.L.A.* can also be updated as new data appear – in particular, by adding the information from other libraries and archives yet to be exploited.

The prosopography of Portuguese learned jurists can be a particularly interesting area of research. Because Portugal had only one university with faculties of law at which therefore all the

56 HESPAHNA (2019b).

letrados were educated, the group forms a manageable research universe. Furthermore, Coimbra's university archives are in good condition, preserving a huge range of documentation on the practice of teaching law. Hundreds of texts of lectures still exist, dating from the mid-16th to the end of the 18th centuries, showing the themes that the academic community discussed.⁵⁷ In addition, with the overseas expansion, this group of jurists expanded also to territories outside Europe, working in the high courts of Goa, Bahia and Rio de

Janeiro, and in dozens of positions all over Brazil, Africa and Southern Asia.⁵⁸ In many towns in, even outside the boundaries of the Portuguese »empire«, notaries – many of them probably law students who had failed to obtain a degree – kept using Portuguese legal formulae. The world of the Portuguese jurists thus also had an impact beyond the judges' proper sphere.⁵⁹



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57 Ibid.

58 CAMARINHAS (2010a); CAMARINHAS (2000b).

59 HESPAÑHA (2019a).

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